
# WEST VIRGINIA
# SECTION 111(d)/129 PLAN REVISION
# FOR THE CONTROL OF AIR POLLUTION FROM COMBUSTION OF SOLID WASTE FOR COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION (CISWI) UNITS

## DRAFT

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Promoting a healthy environment.

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# Acronyms and Abbreviations

| | |
|---|---|
| AVG | Average |
| CAA | Clean Air Act |
| CEMS | Continuous Emission Monitoring System |
| C.F.R. | Code of Federal Regulations |
| CISWI | Commercial and Industrial Solid Waste Incinerators |
| C.S.R. | Code of State Rules |
| DAQ | Division of Air Quality |
| DEP | Department of Environmental Protection |
| EIS | Emissions Inventory System |
| EPA | Environmental Protection Agency |
| ERU | Energy Recovery Units |
| FR | Federal Register |
| FVF | Fuel Variability Factor |
| MIN | Minute |
| PPM | Parts per Million |
| SLEIS | State and Local Emissions Inventory System |
| U.S. | United States |
| WV | West Virginia |

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**WEST VIRGINIA § 111(d)/129 PLAN REVISION FOR THE CONTROL OF AIR POLLUTION FROM COMBUSTION OF SOLID WASTE FOR COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION (CISWI) UNITS**

## 1.0. Executive Summary

The United States Environmental Protection Agency (EPA) is required by sections 111 and 129 of the Clean Air Act, as amended (CAA) to develop regulations to control air pollutant emissions from commercial and industrial solid waste incineration (CISWI) units. Section 111 regulates standards of performance for stationary sources and section 129 regulates air emissions from the combustion of solid waste. Under the authority of these sections, the EPA promulgated regulations governing emissions from new and existing CISWI units as provided in Title 40 of the Code of Federal Regulations (40 C.F.R.), part 60, subparts CCCC (Standards of Performance for New Stationary Sources) and DDDD (Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units), respectively.

This document serves as a revision to the West Virginia § 111(d)/129 plan for CISWI units (the "plan"). The revised plan addresses the final action on reconsideration by the EPA *Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units* published at 81 Fed. Reg. 49056, June 23, 2016.

WV legislative rule, 45 C.S.R. 18 - *Control of Air Pollution from Combustion of Solid Waste*, effective June 1, 2018, adopts standards of performance and implements emission guidelines for CISWI units pursuant to §§ 111 and 129 of the CAA for the control of designated pollutants from CISWI units located in West Virginia. The rule codifies the incorporation by reference of 40 C.F.R. 60, subpart CCCC for

new units and adopts the emission guidelines of 40 C.F.R. 60, subpart DDDD for existing CISWI units. The WV rule 45 C.S.R. 18 is included as Appendix A of the plan.

The revised plan submitted herein, includes WV legislative rule 45 C.S.R. 18 promulgated June 1, 2018, included as appendix A to this plan. The revised plan meets the state plan requirements provided under § 60.2515 and 40 C.F.R. 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities).

## 2.0. Request

West Virginia DEP is requesting that the EPA approve the *West Virginia Section 111(d)/129 Plan Revision for the Control of Air Pollution from Combustion of Solid Waste for Commercial and Industrial Solid Waste Incineration (CISWI) Units* submitted ENTER DATE to fulfill the state's obligations under §§ 111(d)(1) and 129(b)(2) of the CAA.

CAA § 111(d)(1) requires each state submit to the EPA a plan which establishes standards of performance for any existing source in response to the issuance of Emission Guidelines by the EPA and provide for the implementation and enforcement of such standards. CAA § 129(b)(2) requires each state in which solid waste incineration units are operating in the category for which the EPA promulgated Emission Guidelines to submit to the EPA a plan to implement and enforce the guidelines with respect to such units. The state plan shall be at least as protective as the emission guidelines promulgated by the EPA.

## 3.0. Background

The West Virginia Department of Environmental Protection (DEP) last submitted *CAA 111(d)/129 Plan - Revised Plan for Commercial and Industrial Solid Waste Incineration (CISWI) Units* to the EPA on November 21, 2016, following the promulgation of 45 C.S.R. 18 that became effective July 1, 2016.

Prior to the effective date of the WV rule, the EPA published *Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units* on June 23, 2016. That action set forth the EPA's final decision on the issues for which it granted reconsideration on January 21, 2015, pertaining to certain aspects of the February 7, 2013, final rule *Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units*.

In the June 23, 2016 final rule, the EPA finalized action on four topics: (1) definition of "continuous emission monitoring system (CEMS) data during startup and shutdown periods;" (2) particulate matter (PM) limit for the waste-burning kiln subcategory: (3) fuel variability factor (FVF) for coal-burning energy recovery units (ERUs); and (4) the definition of "kiln". The June 23, 2016 action also included the final decision by the EPA to deny requests for reconsideration of all other issues raised in the petitions for reconsideration of the 2013 final CISWI rule for which it did not grant reconsideration.

The DEP proposed revisions to 45 C.S.R. 18 for the WV 2018 legislative session to comport with the June 23, 2016 EPA CISWI rules and final actions on reconsideration for new and existing CISWI sources, provided in 40 C.F.R. 60, subparts CCCC and DDDD respectively, [81 Fed. Reg. 40956, June 23, 2016].

The revised plan submitted herein, includes 45 C.S.R. 18 promulgated June 1, 2018.

## 4.0. Plan Requirements [40 C.F.R. §60.2515]

Provided below is the demonstration that the WV CISWI plan meets all required elements of a CISWI State plan. WV legislative rule 45 C.S.R. 18, *Control of Air Pollution from Combustion of Solid Waste*, promulgated June 1, 2018, is included as Appendix A to this plan.

## 4.1. Source Inventory for Affected CISWI Facilities [40 C.F.R. § 60.2515(a)(1) and § 60.25(a)]

The plan shall include:

An inventory of affected CISWI units in West Virginia, including those that have ceased operation but have not been dismantled.

Subpart B

Each plan shall include an inventory of all designated facilities.

West Virginia Plan:

Incineration units that meet all three criteria described in paragraphs 9.2.a.1 through 9.2.a.3 of 45 C.S.R. 18 are subject to the requirements for existing CISWI units under section 9 of 45 C.S.R. 18. The three criteria are: (1) CISWI units and air curtain incinerators that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013; (2) incineration units that meet the definition of a CISWI unit as defined under 45 C.S.R. 18 § 2.4; and (3) incineration units not exempt under 45 C.S.R. 18 § 9.2.d.

The West Virginia source inventory continues to have one (1) operating CISWI unit. The facility information is provided below:

| Facility Name | Facility ID # | Mailing Address |
|---|---|---|
| The Chemours Company, Washington Works, WV | 107-00182 | P.O. Box 1217, Parkersburg, WV 26181 |

If there is another CISWI unit not identified above, the owner or operator would be subject to the requirements of 45 C.S.R. 18 and this plan.

## 4.2. Emission Inventory for Affected CISWI Facilities [ 40 C.F.R. §§ 60.2515(a)(2) and 60.25(a)]

The plan shall include:

An inventory of emissions from affected CISWI units in WV.

Subpart B

Each plan shall include emission data for the designated pollutants and information related to emissions as specified in 40 C.F.R. 60, Appendix D. Data must be summarized in the plan and the emission rates of designated pollutants shall be correlated with applicable emission standards.

West Virginia Plan (WV code is 047):

The table below provides the CISWI emission limit for each pollutant and the results from the Chemours, Washington Works facility (WV ID# 107-00182) tests conducted between June 28, 2016 through July 23, 2016. The average test results shown below are the worst average results for each pollutant from varying test conditions. The data shows that emissions from the testing are well below the emission limit for each pollutant. Facility emissions are entered into the current State and Local Emissions Inventory System (SLEIS) that are uploaded to the EPA's Emissions Inventory System (EIS).

| Pollutant | CISWI Emission Limits[a] | Chemours Washington Works[b] Average Test Results[a] | Unit of Measure |
|---|---|---|---|
| Cadmium | 0.004 | 0.0015 | mg/dscm [c] |
| Carbon Monoxide | 157 | 2.0 | ppm [d] |
| Dioxins/Furans, Total Toxic Equivalent basis | 0.41 | 0.00231 | ng/dscm [e] |
| Hydrogen Chloride | 62 | 0.17 | ppm |
| Lead | 0.04 | 0.0011 | mg/dscm |

| | | | |
|---|---|---|---|
| Mercury | 0.47 | 0.000039 | mg/dscm |
| Nitrogen Oxides | 388 | 3.0 | ppm |
| Opacity (6 min. avg.) | 10 | 0.3 | % |
| Particulate Matter | 70 | 13.96 | mg/dscm |
| Sulfur Dioxide | 20 | 0.2 | ppm |

[a] Emission limits are measured at 7% oxygen, dry basis, at standard conditions
[b] SLEIS Identifiers: Emission Unit - FT1; Flouropolymers Area - T12347; Process - FT1TC Thermal Convertor
[c] mg/dscm = Milligrams per dry standard cubic meter at 7% oxygen; standard conditions are 68°F and 29.92 in. Hg
[d] ppm = Parts per million at 7% oxygen
[e] ng/dscm = Nanograms der dry standard cubic meter at 7% oxygen

## 4.3. Compliance Schedules

Model Rule:

For facilities subject to the requirements of 40 C.F.R. 60, subpart DDDD as promulgated on June 23, 2016, the facility must achieve compliance in accordance with the milestones shown below:

| **MILESTONE** | **COMPLIANCE DATE** |
|---|---|
| Compliance Required | February 7, 2018 |

West Virginia Plan:

45 C.S.R. 18 § 9.3 specifies compliance times and increments of progress.

## 4.4. Emission Limitations; Operator Training and Qualification; Waste Management Plan; and Operating Limits [40 C.F.R. §§ 60.2515(a)(4)]

The West Virginia § 111(d)/129 plan must include emission limitations, operator training and qualification requirements, a waste management plan, and operating limits that are at least as protective as the emission guidelines.

**4.4.a. Emission Limitations**
**[40 C.F.R. §§ 60.2670 and 60.24(a)(b)]**

Model Rule:

The owner or operator must meet the emission limitations for each CISWI unit, including bypass stack or vent, specified in Table 2 or Tables 6 through 9 of 40 C.F.R. 60, subpart DDDD by the final compliance date. The emission limitations apply at all times the unit is operating, including and not limited to, startup, shutdown, or malfunction events. Units that do not use wet scrubbers must maintain opacity to less than or equal to the percent opacity (three 1-hour blocks consisting of ten 6-minute average opacity values) specified in Table 2 of 40 C.F.R. 60, subpart DDDD, as applicable.

Subpart B:

Each plan shall include emission standards that shall be either based on an allowance system or prescribe allowable rates of emissions except when it is clearly impracticable. Where emission standards prescribing equipment specifications are established, the plan shall, to the degree possible, set forth the emission reductions achievable by implementation of such specifications, and may permit compliance by the use of equipment determined by the State to be equivalent to that prescribed. Emission standards shall apply to all designated facilities within the State.

West Virginia Plan:

West Virginia requires existing CISWI units to comply with emission limits under 45 C.S.R. 18 § 9.6 and Tables 45-18F or 45-18J through 45-18M, by the final compliance date set forth in § 9.3.b. The emission limitations apply at all times the unit is operating including and not limited to startup, shutdown, or malfunction. The tables specify emission limits for opacity and all pollutants identified in the model rule. The emission limits contained in 45 C.S.R. 18 are the same as those provided in the model rule and

therefore are at least as protective as the emission guidelines. The WV plan meets the requirements of the model rule and 40 C.F.R. 60, subpart B.

### 4.4.b. Operator Training and Qualification [40 C.F.R. § 60.2635 through § 60.2665]

Model Rule

The owner or operator of each CISWI facility must comply with the operator training and qualification requirements in 40 C.F.R. §§ 60.2635 through 60.2665. No CISWI unit can be operated unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or can be at the facility within one hour. The trained and qualified CISWI operator may operate the unit directly or be the direct supervisor of one or more other plant personnel who operate the unit.

The owner or operator must maintain readily accessible documentation at the facility that addresses the requirements set forth in 40 C.F.R. § 60.2660. To maintain qualifications, the owner or operator must complete an annual review or refresher course meeting the requirements of 40 C.F.R. § 60.2650. As specified in 40 C.F.R. § 60.2640, the operator training and qualification requirement must be met by the later of the three dates specified in 40 C.F.R. § 60.2640 (a) through (c).

West Virginia Plan

Section 9.5 of 45 C.S.R. 18 addresses operating training and qualification requirements that were adopted from the model rule language. No CISWI unit can be operated unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or can be at the facility within one hour. The trained and qualified CISWI operator may operate the unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. Requirements for an incinerator operator training course are addressed under § 9.5.b and must be completed in accordance with § 9.5.c. To maintain qualifications, the owner or operator must complete an annual review or refresher course and meet the requirements of §

9.5.f. Section 9.5.h requires documentation be available at the facility and readily accessible for all CISWI unit operator and specifies the required documentation. 45 C.S.R. 18 and the WV plan are at least as protective as the emission guidelines that it adopted.

### 4.4.c. Waste Management Plan Requirements [40 C.F.R. § 60.2620 through § 60.2630]

Model Rule

The owner or operator of the existing CISWI is required to prepare a waste management plan in accordance with40 C.F.R. §§ 60.2620 through 60.2630. The waste management plan is due when the final control plan is due according to Table 1 of 40 C.F.R. 60, subpart DDDD. To reduce or eliminate toxic emissions from incinerated waste, the waste management plan shall specify the feasibility and methods used to reduce solid waste components from the waste stream.

West Virginia Plan

The requirements for the waste management plan can be found in 45 C.S.R. 18 § 9.4 and were adopted from the model rule. The owner or operator is required to submit the waste management plan to the Secretary by the date the final control plan is due. The waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries or metals or the use of recyclable materials. The plan must identify any additional waste management measures, and the source must implement those measures considered practical and feasible based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

The WV plan is as protective as the model rule and meets the emission guidelines.

### 4.4.d. Operating Limits [40 C.F.R. §§ 60.2675 and 60.2680]

Model Rule

The operating limit requirements are provided in 40 C.F.R. §§ 60.2675 and 60.2680. The requirements differ based on the type of air pollution control mechanism chosen to comply with the emission limitations.

West Virginia Plan

West Virginia requires owners or operators to comply with the operating limits provisions under 45 C.S.R. 18 § 9.6 that were adopted from the model rule. The WV plan is as protective as the model rule and meets the emission guidelines.

## 4.5. Performance Testing, Monitoring, Recordkeeping, and Reporting Requirements [40 C.F.R. § 60.2515(a)(5)]

The West Virginia § 111(d)/129 plan must include performance testing, recordkeeping, and reporting requirements.

### 4.5.a. Compliance and Performance Testing [40 C.F.R. §§ 60.2690 through 60.2725 and 60.24(b)(2)]

Model Rule

The model rule provides requirements for performance testing, initial compliance, and continuous compliance.

Subpart B

Test methods and procedures for determining compliance with the emission standards shall be specified in the plan. Methods other than those specified in Appendix A to 40 C.F.R. 60 may be specified in the plan if shown to be equivalent or alternative methods as defined in §§ 60.2 (t) and (u).

West Virginia Plan

Section 9.7 of 45 C.S.R. 18 establishes performance test method requirements, section 9.8 establishes initial compliance requirements, and section 9.9 establishes continuous compliance requirements. Additional detail is provided below.

The performance testing and compliance requirements promulgated under 45 C.S.R. 18 and included in Tables 45-18F and 45-18J through 45-18M were adopted from the model rule and therefore, meet the requirements of the model rule and the emission guidelines. The requirement to provide test methods and procedures for determining compliance with emission standards in the state plan under § 60.24(b)(2) has been met.

**4.5.a.1. Performance Testing**
**[40 C.F.R. §§ 60.2690 and 60.2695]**

Model Rule

Results from the performance tests are used to demonstrate compliance with the emission limitations in Table 2 or Tables 6 through 9 of 40 C.F.R. 60, subpart DDDD. All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations and this must be documented. Performance testing must follow the requirements of 40 C.F.R. § 60.2690.

Subpart B

Test methods and procedures for determining compliance with the emission standards shall be specified in the plan.

West Virginia Plan

Results from the performance tests are used to demonstrate compliance with the emission limitations in Table 45-18F or Tables 45-18J through 45-18M. All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations that must be documented by maintaining a log of the quantity of waste burned and the types of waste burned during the performance test. Performance testing must be done according to the requirements of 45 C.S.R. 18 § 9.7.

**4.5.a.2. Initial Compliance Requirements**
**[40 C.F.R. §§ 60.2700 through 60.2706]**

Model Rule

40 C.F.R. §§ 60.2700 and 60.2705 require the owner or operator to conduct an initial performance test to determine compliance with the emission limitations in Table 2 and Tables 6 through 9 of 40 C.F.R. 60, subpart DDDD and to establish operating limits. The performance test must be conducted using the test methods listed in Table 2 of this subpart and Tables 6 through 9 of 40 C.F.R. 60, subpart DDDD and the procedures in § 60.2690. The use of the bypass stack during a performance test shall invalidate the performance test. The owner or operator must conduct a performance evaluation of each continuous emissions monitoring system (CEMS) within 60 days of installation of the monitoring system. The initial performance test shall be conducted no later than 180 days after the final compliance date.

If the owner or operator commences or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility and conducted a test consistent with the provisions of this subpart while combusting the given solid waste within the six months preceding the reintroduction of that solid waste in the combustion chamber, the owner or operator does not need to retest until six months from the date of reintroduction of that solid waste. If the owner or operator commences or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility and has not conducted a performance test consistent with the provisions of this subpart while combusting the given solid waste within the six months preceding the reintroduction of that solid waste in the combustion chamber, the owner or operator must conduct a performance test within 60 days of commencing or recommencing solid waste combustion.

The initial air pollution control device inspection must be conducted within 60 days after installation of the control device and the associated CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after the final compliance date for meeting the amended emission limitations. Within 10 operating days following an air pollution control device inspection, all necessary repairs must be completed unless the owner or operator obtains written approval from the state agency establishing a date whereby all necessary repairs of the designated facility must be completed.

West Virginia Plan

45 C.S.R. 18 § 9.8 establishes initial compliance requirements for the owner or operator of a CISWI unit located in West Virginia. The owner or operator is required to conduct an initial performance test to determine compliance with the emission limitations in Table 45-18F and Tables 45-18J through 45-18M and to establish operating limits. The owner or operator must conduct performance testing using the test methods established under 45 C.S.R. 18 §§ 9.6 and 9.7 and provided in Table 45-18F and Tables 45-18J

through 45-18M. If a kiln-specific emission limit must be determined, the owner or operator would calculate it in accordance with 45 C.S.R. 18 § 9.9.y. Use of the bypass stack during a performance test invalidates the performance test. The owner or operator must conduct a performance evaluation of each CEMS within 60 days of installation of the monitoring system. The owner or operator must conduct the initial performance test no later than 180 days after the final compliance date.

If the owner or operator commences or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility and conducted a test consistent with the provisions of 45 C.S.R. 18 § 9 while combusting the given solid waste within the six months preceding the reintroduction of that solid waste in the combustion chamber, the owner or operator does not need to retest until six months from the date of reintroduction of that solid waste. If the owner or operator commences or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility and has not conducted a performance test consistent with 45 C.S.R. 18 § 9 while combusting the given solid waste within the six months preceding the reintroduction of that solid waste in the combustion chamber, the owner or operator must conduct a performance test within 60 days of commencing or recommencing solid waste combustion.

The owner or operator must conduct the initial air pollution control device inspection within 60 days after installation of the control device and the associated CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after the final compliance date for meeting the amended emission limitations. Within 10 operating days following an air pollution control device inspection, the owner or operator must complete all necessary repairs unless the obtains written approval from the state agency establishing a date whereby all necessary repairs of the designated facility must be completed.

**4.5.a.3. Continuous Compliance Requirements**
**[40 C.F.R. §§ 60.2710 through 60.2725]**

Model Rule

The emission standards and operating requirements set forth in 40 C.F.R. 60, subpart DDDD apply at all times. The owner or operator shall conduct an annual performance test unless using a CEMS or continuous opacity monitoring system to determine compliance. The annual performance test shall be conducted between 11 and 13 months of the previous performance test. The operating parameters specified in §§ 60.2675 or 60.2680 shall be monitored continuously. Only the same type of waste used to establish operating limits shall be burned during the performance test. Additional requirements exist for energy recovery units, incinerators, and small remote units, for coal and liquid/gas energy recovery units, for energy recovery units, for waste-burning kilns, and other compliance scenarios.

The air pollution control device must be inspected on an annual basis (no more than 12 months following the previous annual air pollution control device inspection). The model rule also includes guidelines for conducting performance testing less often and repeating a performance test to establish new operating limits.

West Virginia Plan

45 C.S.R. 18 § 9.9 establishes continuous compliance requirements. Emission standards and operating requirements apply at all times. The owner or operator is required to conduct an annual performance test for the pollutants listed in Tables 45-18F or Tables 45-18J through 45-18M and for opacity unless a CEMS or continuous opacity monitoring systems is used to determine compliance. The owner or operator must conduct the annual performance test between eleven and thirteen months of the previous performance test. The owner or operator must continuously monitor the operating parameters specified in 45 C.S.R. 18 §§ 9.6.c through 9.6.k.5 or established under 45 C.S.R. 18 §§ 9.6.l and 9.6.m. The owner or operator must

burn only the same type of waste and fuels used to establish the operating limits during the performance test. Additional requirements exist for energy recovery units, incinerators, and small remote units, for coal and liquid/gas energy recovery units, for energy recovery units, for waste-burning kilns, and other compliance scenarios.

The owner or operator must conduct the air pollution control device inspection on an annual basis (no more than twelve months following the previous annual air pollution control device inspection). 45 C.S.R. 18 § 9.9.aa establishes requirements for conducting performance testing less often and repeating a performance test to establish new operating limits.

**4.5.b. Monitoring**
**[40 C.F.R. §§ 60.2730, 60.2735, and 60.25(b)]**

Model Rule

§ 60.2730 species the monitoring equipment to be installed and the parameters that must be monitored. The requirements in this section are specific to the control mechanism chosen to comply with emission limits. § 60.2735 specifies the monitoring and data collection requirements for each continuous monitoring system. An owner or operator must operate the monitoring system and collect data at all required intervals at all times compliance is required except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods and required monitoring system quality assurance or quality control activities. An owner or operator shall not use data recorded during monitoring system malfunctions, associated repairs, or required quality assurance or quality control activities, in calculations used to report emissions or operating levels. An owner or operator must use all data collected during all other periods, including data normalized for above scale readings, in assessing the operation of the control device and associated control system. Failure to collect required data is a deviation of the monitoring requirements.

Subpart B

Each plan shall provide for monitoring the status of compliance with applicable emission standards.

West Virginia Plan

The requirements under 45 C.S.R. 18 § 9.10 are specific to the control mechanism the owner or operator chose for compliance with emission limitations and include installation, calibration, maintenance, and operation provisions. Section 9.10.s specifies the monitoring and data collection requirements for each continuous monitoring system. An owner or operator must operate the monitoring system and collect data at all required intervals at all times compliance is required except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods and required monitoring system quality assurance or quality control activities. An owner or operator must not use data recorded during monitoring system malfunctions, associated repairs, or required quality assurance or quality control activities, in calculations used to report emissions or operating levels. An owner or operator must use all data collected during all other periods, including data normalized for above scale readings, in assessing the operation of the control device and associated control system. Failure to collect required data is a deviation of the monitoring requirements.

45 C.S.R. 18 was adopted from the model rule language and therefore meets the requirements of the model rule and emission guidelines. The WV plan includes promulgated requirements for monitoring compliance status with applicable emission standards, as required by 40 C.F.R. 60, subpart B. Please refer to section III.5.c of this plan for additional information pertaining to recordkeeping and reporting.

**4.5.c. Reporting and Recordkeeping**
**[40 C.F.R. § 60.2740 through § 60.2800]**

Model Rule

Owners or operators must comply with all applicable reporting and recordkeeping requirements under §§ 60.2740 through 60.2800. Owners or operators must maintain specified records for a period of at least 5 years. Table 5 of subpart DDDD provides a summary of the reporting requirements. Annual reports must be submitted no later than 12 months following the previous report and must include all required information.

Subpart B (§§ 60.25(b) and (c))

Each plan shall provide for monitoring the status of compliance with applicable emission standards. Each plan shall, as a minimum, provide for legally enforceable procedures requiring owners or operators of designated facilities to maintain records and periodically report to the state information on the nature and amount of emissions from such facilities, and/or such other information as may be necessary to enable the state to determine whether such facilities are in compliance with applicable portions of the plan. Each plan shall, as a minimum, provide for periodic inspection and, when applicable, testing of designated facilities.

Each plan shall provide that information obtained by the state under paragraph (b) of this section shall be correlated with applicable emission standards and made available to the general public.

West Virginia Plan

Recordkeeping requirements are established under 45 C.S.R. 18 § 9.11. The owner or operator must maintain specified records for a period of at least five years. Reporting requirements are established under 45 C.S.R. 18 § 9.12 and summarized in Table 45-18I. The owner or operator must submit annual reports no later than 12 months following the previous report and the report must include all required information.

The recordkeeping and reporting requirements promulgated under 45 C.S.R. 18 adopt the model rule language and therefore, meet the model rule and emission guideline requirements.

45 C.S.R. 18 § 13.3 requires that an owner or operator subject to section 9 of the rule to operate the unit in accordance with a permit issued under the CAA § 129(e) and 45 C.S.R. 30. The WV Title V permit program last approved by EPA at 81 Fed. Reg. 7463, March 14, 2016 is codified under 45 C.S.R. 30.
Section 4.5.b of the plan provides information regarding monitoring related requirements for a state plan. The authority to require the use of monitors and require emission reports is discussed under the legal authority section (4.9) of the plan. The legal authority section also describes WV's authority to make emission data from existing facilities available to the public and discusses the state's Freedom of Information Act.
Additional information regarding enforceable mechanisms for implementation can be found in section 4.8 of the plan.

The performance testing, monitoring, recordkeeping and reporting provisions of the West Virginia plan are as protective as the model rule and meets the emission guidelines, and complies with 40 C.F.R. 60, subpart B.

## 4.6. Public Participation

The state plan must include certification that the hearing on the state plan was held in accordance with § 60.23(d), a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission. Notice of the hearing shall be given at least 30 days prior to the hearing date and shall include the information required under § 60.23(d)

Prior to submitting the revision to the WV § 111(d)/129 plan, the DEP allowed opportunity for public comment, held a public hearing on the plan, and provided notification to the EPA in a letter to Christina Fernandez dated INSERT DATE. The notice of the public hearing was published on June 22, 2018 as a Class 1 legal advertisement in the Charleston Newspapers and was published on June 22, 2018 in the WV State Register, providing at least 30-day notice prior to the hearing. The public hearing is being held on July 23, 2018 at 601 57th Street, SE, Charleston, WV at 5:30 p.m.

The DEP certified in the transmittal letter that the public hearing was held in accordance with 40 C.F.R. § 60.23(d). Records of the hearing will be maintained in accordance with 40 C.F.R. § 60.23(e) and will be maintained for at least two years.

As required under 40 C.F.R. § 60.23(f), notices of the public hearing, the hearing sign-in sheet of attendees including their organizational affiliations, the transcript from the public hearing, the public comment received during the notice period and the response to comment document, are included in Appendix B of this plan.

## 4.7. Progress Reports [40 C.F.R. §§ 60.2515(a)(7) and 60.25(e and f)]

States are required to submit annual reports on progress in plan enforcement to the EPA. The information required herein must be included in the annual report required by 40 C.F.R. § 51.321.

The annual progress report must include the following information:

1. Enforcement actions initiated against designated facilities during the reporting period, under any emission standard or compliance schedule of the plan.

2. Identification of the achievement of any increment of progress required by the applicable plan during the reporting period.

3. Identification of designated facilities that have ceased operation during the reporting period.

4. Submission of emission inventory data as described in 40 C.F.R. § 60.25(a) for designated facilities that were not in operation at the time of plan development but began operation during the reporting period.

5. Submission of additional data as necessary to update the information submitted under 40 C.F.R. 60.25(a) or in previous progress reports.

6. Submission of copies of technical reports on all performance testing on designated facilities conducted under 40 C.F.R. § 60.25(b)(2), complete with concurrently recorded process data.

West Virginia Plan

The WV DEP, DAQ last submitted the § 111(d)/129 Plan Annual Progress Report for Existing Commercial and Industrial Solid Waste Incineration Units to Mr. Cecil A. Rodrigues, EPA Region 3, on July 7, 2017 in accordance with the requirements of 40 C.F.R. § 60.25(e). WV DEP remains committed to submitting the progress plan enforcement reports to the EPA on an annual basis.

## 4.8. IDENTIFICATION OF ENFORCEABLE STATE MECHANISMS FOR IMPLEMENTATION [40 C.F.R. § 60.2515(a)(8)]

Provided herein are the enforceable mechanisms WV selected to implement the new source performance standards of 40 C.F.R. 60, subpart CCCC and the emission guidelines of 40 C.F.R. 60, subpart DDDD.

### 4.8.a. Implementation of New Source Performance Standards

45 C.S.R. 18 Control of Air Pollution from Combustion of Solid Waste was promulgated by WV DEP following the passage of Senate Bill 163 during the 2018 WV Legislative Session and signature by the Governor on February 27, 2018. This legislative rule has an effective date of June 1, 2018 and is included as Appendix A to this plan.

Under § 45-18-3, the Secretary adopts and incorporates by reference 40 C.F.R. 60, subpart CCCC Standards of Performance for Commercial and Industrial Solid Waste Incineration Units, including any reference methods, performance specifications, and other test methods which are appended to the standard and contained in the subpart, effective June 1, 2017.

§ 45-18-8 requires owners or operators of new CISWI units that meet the applicability to comply with all applicable standards of performance, requirements, and provisions of 40 C.F.R. 60 subpart CCCC, including any reference methods, performance specifications and other test methods associated with subpart CCCC.

### 4.8.b. Implementation of Emission Guidelines for Existing CISWI Sources

45 C.S.R. 18 Control of Air Pollution from Combustion of Solid Waste was promulgated by WV DEP following the passage of Senate Bill 163 during the 2018 WV Legislative Session and signature by the Governor on February 27, 2018. This legislative rule has an effective date of June 1, 2018 and is included as Appendix A to this plan.

45 C.S.R. 18 adopts the Emission Guidelines and compliance times for CISWI Units and the provisions of the model rule established under 40 C.F.R. 60, subpart DDDD. 45 C.S.R. 18 was revised to implement the June 23, 2016 Emission Guidelines published by the EPA. § 45-18-9.1 requires the owner or operator

of an existing CISWI unit to comply with the applicable emission guidelines, compliance times, requirements and provisions of 40 C.F.R. 60, subpart DDDD set forth in § 45-18-9 and Tables 45-18E, 45-18F, 45-18G, 45-18H, 45-18I, 45-18J, 45-18K, 45-18L and 45-18M, including any reference methods, performance specifications and other test methods associated with subpart DDDD. Section 9.1 of 45 C.S.R. 18 requires that no person shall reconstruct, modify, or operate, or cause to be reconstructed, modified, or operated an existing CISWI unit which results in a violation of the requirements for existing CISWI units set forth in section 9.

## 4.9. Legal Authority [40 C.F.R. §§ 60.2515(a)(9) and 60.26(a)]

Pursuant to 40 C.F.R. § 60.26(a), state plans must show that states have legal authority to carry out the plan including the authority to adopt emission standards and compliance schedules applicable to designated facilities and to enforce applicable laws, regulations, standards, compliance schedules and seek injunctive relief.

The DAQ has the statutory and regulatory authority under W.Va. Code §§ 22-5-1 et seq. (Appendix C) to adopt and enforce rules and regulations to implement the State Plan. W. Va. Code § 22-5-4(a)(4) authorizes the Director to promulgate legislative rules relating to the control of air pollution. The DAQ, effective June 1, 2018, promulgated legislative rule, 45 C.S.R. 18, which incorporates by reference the New Source Performance Standards for CISWI Units (40 C.F.R. 60, subpart CCCC). Such incorporation by reference of model legislation is a permissible means of enacting law under West Virginia law. In addition, 45 C.S.R. 18 establishes the Emission Guidelines contained in 40 C.F.R. 60, subpart DDDD.

The applicable emission standards and other requirements for existing facilities are incorporated by reference in 45 C.S.R. 18 § 9.1. The pertinent provisions from the federal regulations relating to compliance schedules for existing facilities are contained in subsection 9.3 of 45 C.S.R. 18.

State plans must also demonstrate the state has authority to obtain information necessary to determine compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.

Regarding the enforcement of applicable laws, regulations, standards, and compliance schedules, the DEP has several enforcement mechanisms available under state law, including permits, administrative orders, civil and criminal penalties, and injunctive relief.

Because the emission standards and compliance schedules included in the plan are codified in 45 C.S.R. 18, any violation of such standards or schedules constitutes a violation of a WV rule and is therefore subject to civil penalties of up to $10,000 for each day of violation and criminal penalties of up to $25,000 for each day of violation and/or imprisonment for up to one year in jail (W.Va. Code § 22-5-6). In addition to civil and criminal penalties, the DEP may seek injunctive relief against any person in violation of 45 C.S.R. 18 (W. Va. Code § 22-5-7).

In addition to penalties and injunctive relief, the DEP may compel compliance with 45 C.S.R. 18 through the issuance of administrative orders. Under W. Va. Code §§ 22-5-4(a)(5) and (6) and 22-5-5, the DEP may issue administrative orders including cease and desist orders and order suspending, modifying or revoking permits. Such administrative orders may be appealed to the Air Quality Board, an administrative board with quasi-judicial powers. The DEP may also collect administrative penalties from a source in violation of a rule under an administrative consent order (W. Va. Code § 22-5-4(a)(18)).

Existing facilities may also be required to obtain permits, in which case, emission standards and compliance schedules from 45 C.S.R. 18 are included as enforceable permit conditions.[1] The existing facility may be required to obtain a preconstruction permit under W. Va. Code § 22-5-11 and/or an operating permit under W. Va. Code § 22-5-12.[2] The permit must ensure compliance with all applicable requirements, including the emission standards and compliance schedules required under 45 C.S.R. 18; W. Va. Code §§ 22-5-11 and 12; also see WV 45 C.S.R. 13 §§ 5.7 and 5.11 and WV 45 C.S.R. 30 Section 5 and 45 C.S.R. 30 Section 12.

In addition to the authority to adopt and enforce the applicable emission standards and compliance schedules, the DEP has authority to obtain information necessary to determine the compliance status of existing facilities, including requiring facilities to maintain compliance records, pursuant to W.Va. Code § 22-5-4(a)(14), which states:

(a) The director is authorized:

> (14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the director such information as the director may require in a form or manner prescribed by him or her for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe.

[1] Under W. Va. Code § 22-5-6, the violation of a permit is subject to the same enforcement remedies as the violation of a rule.

[2] The State's applicable preconstruction permit program rules consist of 45 C.S.R. 13 for minor sources, 45 C.S.R. 14 for major PSD sources, and 45 C.S.R. 19 for major sources located in non-attainment areas. The State's operating permit program (Title V program) is found at 45 C.S.R. 30.

The DEP also has the authority to conduct inspections and tests of existing facilities pursuant to W.Va. Code § 22-5-4 (a)(6) and (9), which state:

(a) The director is authorized:

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations, and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder; and

(9) To enter and inspect any property, premise, or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules promulgated under the provisions of this article. No person shall refuse entry or access to any authorized representative of the director who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: Provided, that nothing contained in this article eliminates any obligation to follow any process that may be required by law.

An additional authority which must be demonstrated in the plan is the agency's authority to require the use of monitors and require emission reports of existing facilities. This authority exists in W.Va. Code § 22-5-4 (a)(15), which states:

(15) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the director.

In addition to the general statutory authority discussed above, the DEP has specific regulatory authority under 45 C.S.R. 18 to require existing facilities to comply with operator training and qualification requirements, waste management plans, equipment inspections, monitoring of emissions, keeping of records, and submitting reports in accordance with the applicable provisions of 40 C.F.R. 60, subpart DDDD, and 45 C.S.R. 18 § 9.1. Furthermore, the DEP has authority to include conditions in any administrative orders or permits issued to existing facilities to ensure compliance with such conditions. W.Va. Code §§ 22-5-4(a)(5), 22-5-5, 22-5-11, and 22-5-12.

Lastly, the state must have authority to make emission data from existing facilities available to the public. The DEP has such authority under W.Va. Code § 22-5-10, which states in pertinent part:

> All air quality data, emission data, permits, compliance schedules, . . . shall be available to the public, except that upon a showing satisfactory to the director . . . that records, reports, data, or information . . . would divulge methods or processes entitled to protection as trade secrets . . . the director shall consider such records. . . confidential: Provided, that such confidentiality does not apply to the types and amounts of air pollutants discharged and that such records . . . may be disclosed to other officers, employees or authorized representatives of the state or of the federal environmental protection agency . . . Provided, however, That such officers, employees or authorized representatives . . . protect such records . . . to the same degree required of the director by this section. . . .

See, 45 C.S.R. 31 § 2.4 for the definition of the term "types and amounts of pollutants discharged."

In addition to W.Va. Code § 22-5-10, the state's Freedom of Information Act requires the DEP to make records available to the public upon request, unless such records specifically fall under one of the

exemptions contained in the Act (one of which is an exemption for "trade secrets"). See, W.Va. Code §§ 29B-1-1 et seq.

In conclusion, the WV DEP possesses the requisite authority to adopt, implement, and enforce all necessary elements of the WV §§ 111(d) and 129 plan for CISWI, except as outlined in 40 C.F.R. § 60.50c.

## 5.0. Conclusion

Having satisfied the CISWI State Plan requirements of 40 C.F.R. § 60.2515 and 40 C.F.R. 60, subpart B, the WV DEP respectfully requests that the EPA approve the *West Virginia Section 111(d)/120 Plan Revision for the Control of Air Pollution from Combustion of Solid Waste for Commercial and Industrial Solid Waste Incineration (CISWI) Units* submitted herein.

# APPENDICIES

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# APPENDIX A

# 45 C.S.R. 18

# FINAL RULE

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**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

3/22/2018 3:36 PM

# NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE

AGENCY: Air Quality TITLE-SERIES: 45-18

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Control of Air Pollution from Combustion of Solid Waste

CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) SB163

Section § 64-3-1(e) Passed On 2/27/2018 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

June 1, 2018

This rule shall terminate and have no further force or effect from the following date:

00/00/0000

# TITLE 45
# LEGISLATIVE RULE
# DEPARTMENT OF ENVIRONMENTAL PROTECTION
# AIR QUALITY

## SERIES 18
## CONTROL OF AIR POLLUTION FROM COMBUSTION OF SOLID WASTE

### §45-18-1. General.

1.1. Scope. -- This rule adopts standards of performance, and establishes emission guidelines and compliance times pursuant to §§ 111(d) and 129 of the federal Clean Air Act for the control of certain designated pollutants from the following categories of solid waste combustors, combustion units, incinerators and incineration units in West Virginia:

1.1.a. Large municipal waste combustors subject to the standards of performance promulgated by the United States Environmental Protection Agency (U.S. EPA) under 40 CFR Part 60, Subpart Eb;

1.1.b. Small municipal waste combustion units subject to the standards of performance promulgated by the U.S. EPA under 40 CFR Part 60, Subpart AAAA;

1.1.c. Hospital/ medical/ infectious waste incinerators subject to the standards of performance promulgated by the U.S. EPA under 40 CFR Part 60, Subpart Ec, or the emission guidelines and compliance times promulgated by the U.S. EPA under 40 CFR Part 60, Subpart Ce and set forth in section 7 below;

1.1.d. Commercial and industrial solid waste incineration units subject to the standards of performance promulgated by the U.S. EPA under 40 CFR Part 60, Subpart CCCC, or the emission guidelines and compliance times promulgated by the U.S. EPA under 40 CFR Part 60, Subpart DDDD and set forth in section 9 below;

1.1.e. Other solid waste incineration units subject to the standards of performance promulgated by the U.S. EPA under 40 CFR Part 60, Subpart EEEE, and

1.1.f. Sewage sludge incineration units subject to the standards of performance promulgated by the U.S. EPA under 40 CFR Part 60, Subpart LLLL.

1.2. Authority. -- W. Va. Code § 22-5-4.

1.3. Filing Date. -- March 22, 2018.

1.4. Effective Date. -- June 1, 2018.

1.5. This rule codifies general procedures and criteria to implement a program of specific standards of performance, emission guidelines and compliance times for solid waste combustors, combustion units, incinerators and incineration units set forth in the Code of Federal Regulations and as listed below in Tables 45-18A, 45-18B, 45-18C, 45-18D, 45-18E, 45-18F, 45-18G, 45-18H, 45-18I, 45-18J, 45-18K, 45-18L and 45-18M.

1.6. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonation of any emission that is released in any locality in such a manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse any person from complying with other applicable laws, ordinances, regulations or orders of governmental entities having jurisdiction over the combustion of solid waste.

1.7. Incorporation by Reference. -- Federal Counterpart Regulation. The Secretary has determined that a federal counterpart regulation exists. In accordance with the Secretary's recommendation, and with limited exception, this rule incorporates by reference 40 CFR Part 60, Subparts Eb, Ec, AAAA, CCCC, EEEE and LLLL effective June 1, 2017.

**§45-18-2. Definitions.**

2.1. "Administrator" means the Administrator of the United States Environmental Protection Agency (U.S. EPA) or his or her designated representative.

2.2. "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

2.3. "Clean Air Act" or "CAA" means the federal Clean Air Act, as amended, 42 U.S.C. § 7401, et seq.

2.4. "Commercial and industrial solid waste incineration unit" or "CISWI unit" means any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding six months, any solid waste as that term is defined in 40 CFR Part 241. If the operating unit burns materials other than traditional fuels as defined in 40 CFR § 241.2 that have been discarded, and the owner or operator does not keep and produce records as required by subdivision 9.11.u, the operating unit is a CISWI unit. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the solid waste hopper (if applicable) and extends through two areas: the combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system.

2.5. "Hospital/ medical/ infectious waste incinerator" or "HMIWI unit" means any device that combusts any amount of hospital waste or medical/ infectious waste.

2.6. "Municipal waste combustor unit" or "municipal waste combustor" means any setting or equipment that combusts solid, liquid or gasified municipal solid waste including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (i.e., steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/ combustion units.

2.6.a. Municipal waste combustors do not include:

2.6.a.1. pyrolysis/ combustion units located at a plastics/ rubber recycling unit as specified in 40 CFR § 60.50b(m);

2.6.a.2. cement kilns firing municipal solid waste as specified in 40 CFR § 60.50b(p);

2.6.a.3. internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

2.6.b. The municipal waste combustor unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustor water system. The municipal waste combustor boundary starts at the municipal solid waste pit or hopper and extends through:

2.6.b.1. The combustor flue gas system, which ends immediately following the heat recovery equipment or, if there is no heat recovery equipment, immediately following the combustion chamber;

2.6.b.2. The combustor bottom ash system, which ends at the truck loading station or similar ash handling equipment that transfer the ash to final disposal, including all ash handling systems that are connected to the bottom ash handling system; and

2.6.b.3. The combustor water system, which starts at the feed water pump and ends at the piping exiting the steam drum or superheater.

2.7. "Other solid waste incineration unit" or "OSWI unit" means either a very small municipal waste combustion unit or an institutional waste incineration unit. Unit types listed in 40 CFR § 60.2887 are not OSWI units. While not all OSWI units will include all of the following components, an OSWI unit includes, but is not limited to, the municipal or institutional solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The OSWI unit does not include air pollution control equipment or the stack. The OSWI unit boundary starts at the municipal or institutional waste hopper (if applicable) and extends through two areas:

2.7.a. The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and

2.7.b. The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The OSWI unit includes all ash handling systems connected to the bottom ash handling system.

2.8. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

2.9. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W. Va. Code §§ 22-1-6 or 22-1-8.

2.10. "Standard Metropolitan Statistical Area" means any areas listed in OMB Bulletin No. 93-17 entitled "Revised Statistical Definitions for Metropolitan Areas" dated June 30, 1993.

2.11. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in 40 CFR Part 60 Subparts A, B, Ce, Eb, Ec, AAAA, CCCC, DDDD, EEEE and LLLL as applicable. Words and phrases not defined therein shall have the meaning given to them in the federal Clean Air Act.

**§45-18-3. Adoption of standards.**

3.1. The Secretary hereby adopts and incorporates by reference the definitions of 40 CFR Part 60, Subparts A and B, the standards of performance and definitions set forth in 40 CFR Part 60, Subparts Eb, Ec, AAAA, CCCC, EEEE and LLLL, including any applicable reference methods, performance specifications and other test methods which are appended to those standards and contained in those subparts, effective June 1, 2017.

**§45-18-4. Requirements for new large municipal waste combustors.**

4.1. Requirements for new LMWC units. -- The owner or operator of a new LMWC unit under subsection 4.2 shall comply with all applicable standards of performance, requirements, and provisions of

40 CFR Part 60 Subpart Eb, including any reference methods, performance specifications, and other test methods associated with Subpart Eb. No person shall construct or operate, or cause to be constructed or operated, a new LMWC unit that results in a violation of 40 CFR Part 60, Subpart Eb or this rule.

4.2. Applicability. -- The owner or operator of a LMWC unit that meets the following criteria is subject to the requirements for new LMWC units set forth in this section. A new LMWC unit is a LMWC unit that either:

4.2.a. Commenced construction after September 20, 1994; or

4.2.b. Commenced modification or reconstruction after June 19, 1996.

**§45-18-5. Requirements for new small municipal waste combustion units.**

5.1. Requirements for new SMWC units. -- The owner or operator of a new SMWC unit under this section shall comply with all applicable standards of performance, requirements, and provisions of 40 CFR Part 60 Subpart AAAA, including any reference methods, performance specifications, and other test methods associated with Subpart AAAA. No person shall construct or operate, or cause to be constructed or operated, a new SMWC unit that results in a violation of 40 CFR Part 60, Subpart AAAA or this rule.

5.2. Applicability. -- The owner or operator of a SMWC unit that meets the following criteria is subject to the requirements for new SMWC units set forth in this section. A new SMWC unit is a SMWC unit that either:

5.2.a. Commenced construction after August 30, 1999; or

5.2.b. Commenced modification or reconstruction after June 6, 2001.

**§45-18-6. Requirements for new hospital/ medical/ infectious waste incinerators.**

6.1. Requirements for new HMIWI units. -- The owner or operator of a new HMIWI unit under this section shall comply with all applicable standards of performance, requirements, and provisions of 40 CFR Part 60, Subpart Ec, including any reference methods, performance specifications, and other test methods associated with Subpart Ec. No person shall construct, reconstruct, modify or operate, or cause to be constructed, reconstructed, modified or operated a new HMIWI unit that results in a violation of 40 CFR Part 60, Subpart Ec or this rule.

6.2. Applicability. -- The owner or operator of a HMIWI unit that meets the following criteria is subject to the requirements for new HMIWI units set forth in this section 6. A new HMIWI unit is a HMIWI unit that either:

6.2.a. Commenced construction after December 1, 2008; or

6.2.b. Commenced modification after April 6, 2010.

6.3. Physical or Operational Changes. Physical or operational changes made to an HMIWI unit to comply with the emission guidelines in section 7 below and 40 CFR Part 60, Subpart Ce do not qualify as a reconstruction or modification under this section 6 and 40 CFR Part 60, Subpart Ec.

**§45-18-7. Requirements for existing hospital/ medical/ infectious waste incinerators.**

7.1. Requirements for existing HMIWI units. -- The owner or operator of an existing HMIWI unit under this section shall comply with the applicable emission guidelines, compliance times, requirements, and provisions of 40 CFR Part 60, Subpart Ce set forth in this section 7 and below in Tables 45-18A, 45-18B, 45-18C and 45-18D, including any reference methods, performance specifications, and other test

methods associated with Subpart Ce. No person shall reconstruct, modify or operate, or cause to be reconstructed, modified or operated, an existing HMIWI unit that results in a violation of 40 CFR Part 60 Subpart Ce, or this rule.

7.2. Applicability. -- HMIWI units that are designated facilities under subdivision 7.2.a are subject to the requirements for existing HMIWI units set forth herein.

7.2.a. Designated facilities. -- Except as provided in subdivisons 7.2.b through 7.2.h, the designated facility to which the emissions guidelines apply is each individual HMIWI unit in West Virginia:

7.2.a.1. For which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998; or

7.2.a.2. For which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010.

7.2.b. A combustor is not subject to this section during periods when only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste is burned, provided the owner or operator of the combustor:

7.2.b.1. Notifies the Secretary of an exemption claim; and

7.2.b.2. Keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, and/or chemotherapeutic waste is burned.

7.2.c. Any co-fired combustor is not subject to this section if the owner or operator of the co-fired combustor:

7.2.c.1. Notifies the Secretary of an exemption claim;

7.2.c.2. Provides an estimate of the relative weight of hospital waste, medical/infectious waste, and other fuels and/or wastes to be combusted; and

7.2.c.3. Keeps records on a calendar quarter basis of the weight of hospital waste and medical/ infectious waste combusted and the weight of all other fuels and wastes combusted at the co-fired combustor.

7.2.d. Units not subject to this section:

7.2.d.1. Any combustor required to have a permit under Section 3005 of the Solid Waste Disposal Act;

7.2.d.2. Any combustor which meets the applicability requirements under 40 CFR Part 60, Subparts Cb, Ea, or Eb (standards or guidelines for certain municipal waste combustors);

7.2.d.3. Any pyrolysis unit; and

7.2.d.4. Cement kilns firing hospital waste and/or medical/ infectious waste.

7.2.e. Physical or operational changes made to an existing HMIWI unit solely for the purpose of complying with emission guidelines under this section are not considered a modification and do not result in an existing HMIWI unit becoming subject to the provisions of 40 CFR Part 60, Subpart Ec.

7.2.f. On or before September 15, 2000, the owner or operator of an existing HMIWI unit shall operate pursuant to a Title V permit in accordance with the requirements of 45CSR30.

7.2.g. Designated facilities under paragraph 7.2.a.1 are subject to the requirements of 40 CFR Part 62, Subpart XX.

7.3. Emissions guidelines.

7.3.a. The owner or operator of an existing HMIWI unit shall comply with the following emissions limits as applicable:

7.3.a.1. For a designated facility set forth in paragraph 7.2.a.1 subject to the emissions guidelines, the requirements listed below in Table 45-18A, except as provided in subdivision 7.3.b;

7.3.a.2. For a designated facility set forth in paragraph 7.2.a.1 subject to the emissions guidelines, the requirements listed in Table 45-18B, except as provided in subdivision 7.3.b;

7.3.a.3. For a designated facility set forth in paragraph 7.2.a.2, the more stringent of the requirements listed in Table 45-18B and Table 1A of 40 CFR Part 60, Subpart Ec.

7.3.b. The owner or operator of any small HMIWI unit constructed on or before June 20, 1996, which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area and which burns less than 2,000 pounds per week of hospital waste and medical/infectious waste shall comply with emissions limits in paragraphs 7.3.b.1 and 7.3.b.2, as applicable. The 2,000 pounds per week limitation does not apply during performance tests.

7.3.b.1. For a designated facility under paragraph 7.2.a.1 subject to the emissions guidelines, the requirements listed in Table 45-18C; and

7.3.b.2. For a designated facility under paragraph 7.2.a.1 subject to the emissions the requirements listed in Table 45-18D.

7.3.c. The owner or operator of any existing HMIWI unit shall comply with the following stack opacity requirements, as applicable:

7.3.c.1. For a designated facility under paragraph 7.2.a.1 subject to the emissions, the requirements in 40 CFR § 60.52c(b)(1); and

7.3.c.2. For a designated facility under paragraph 7.2.a.1 subject to the emissions guidelines and a designated facility under paragraph 7.2.a.2, the requirements in 40 CFR § 60.52c(b)(2).

7.4. Operator training and qualification guidelines. -- The owner or operator of an existing HMIWI unit shall comply with the operator training and qualification requirements specified in 40 CFR § 60.53c:

7.4.a. For a designated facility under paragraph 7.2.a.1, by July 28, 2001, and

7.4.b. For a designated facility under paragraph 7.2.a.2, at the time of initial facility start-up.

7.5. Waste management guidelines. -- The owner or operator of an existing HMIWI unit under paragraphs 7.2.a.1 and 7.2.a.2 shall comply with the waste management plan specified in 40 CFR § 60.55c within one year after the date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units under 40 CFR Part 60, Subpart Ce requirements.

7.6. Inspection guidelines.

7.6.a. The owner or operator of each small HMIWI unit subject to the emissions limits under subdivision 7.3.b and each HMIWI unit subject to the emissions limits under paragraphs 7.3.a.2 and 7.3.a.3 shall perform an initial equipment inspection within one year after the date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units under 40 CFR Part 62, Subpart XX, and the related provisions of 40 CFR Part 60, Subpart Ce. The initial equipment inspection shall include the following:

7.6.a.1. Inspection of all burners, pilot assemblies, and pilot sensing devices for proper operation and cleaning of pilot flame sensor, as necessary;

7.6.a.2. Ensuring proper adjustment of primary and secondary chamber combustion air, and adjust as necessary;

7.6.a.3. Inspection of hinges and door latches and lubrication as necessary;

7.6.a.4. Inspection of dampers, fans, and blowers for proper operation;

7.6.a.5. Inspection of HMIWI unit door and door gaskets for proper sealing;

7.6.a.6. Inspection of motors for proper operation;

7.6.a.7. Inspection of primary chamber refractory lining; cleaning and repairing or replacing lining as necessary;

7.6.a.8. Inspection of incinerator shell for corrosion and hot spots;

7.6.a.9. Inspection of secondary and tertiary chamber and stack, cleaning as necessary;

7.6.a.10. Inspection of mechanical loader, including limit switches, for proper operation, if applicable;

7.6.a.11. Visual inspection of waste bed (grates), and repairing or sealing, as appropriate;

7.6.a.12. For the burn cycle that follows the inspection, documentation that the incinerator is operating properly and making any necessary adjustments;

7.6.a.13. Inspection of air pollution control device(s) for proper operation, if applicable;

7.6.a.14. Inspection of waste heat boiler systems to ensure proper operation, if applicable;

7.6.a.15. Inspection of bypass stack components;

7.6.a.16. Ensuring proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment; and

7.6.a.17. Generally observing that the equipment is maintained in good operating condition.

7.6.b. Within ten operating days following an equipment inspection, all necessary repairs shall be completed unless the owner or operator obtains written approval from the Secretary establishing a date whereby all necessary repairs of the designated facility shall be completed.

7.6.c. The owner or operator of each small HMIWI unit subject to the emissions limits under subdivision 7.3.b and each HMIWI unit subject to the emissions limits under paragraphs 7.3.a.2 and 7.3.a.3 shall perform an equipment inspection annually (no more than 12 months following the previous annual equipment inspection), as outlined in subdivision 7.6.a.

7.6.d. The owner or operator of each small HMIWI unit subject to the emissions limits under paragraph 7.3.b.2 and each HMIWI unit subject to the emissions limits under paragraphs 7.3.a.2 and 7.3.a.3 shall perform an initial air pollution control device inspection, as applicable, within one year following approval of the 111(d)/129 state plan revision for HMIWI units under 40 CFR Part 62, Subpart XX, and the related provisions of 40 CFR Part 60, Subpart Ce. The initial air pollution control device inspection shall include the following:

7.6.d.1. Inspect air pollution control device(s) for proper operation, if applicable;

7.6.d.2. Ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment; and

7.6.d.3. Generally observe that the equipment is maintained in good operating condition.

7.6.e. Within ten operating days following an air pollution control device inspection under subdivision 7.6.d, the owner or operator shall complete all necessary repairs unless the owner or operator obtains written approval from the Secretary establishing a date whereby the owner or operator shall complete all necessary repairs of the designated facility.

7.6.f. The owner or operator of each small HMIWI unit subject to the emissions limits under paragraph 7.3.b.2 and each HMIWI unit subject to the emissions limits under paragraphs 7.3.a.2 and 7.3.a.3 shall perform an air pollution control device inspection, as applicable, annually (no more than 12 months following the previous annual air pollution control device inspection), as outlined in subdivision 7.6.d.

7.7. Compliance, performance testing, and monitoring guidelines.

7.7.a. Except as provided in subdivision 7.7.b, the owner or operator of a HMIWI unit shall comply with the requirements for compliance and performance testing listed in 40 CFR § 60.56c, with the following exclusions:

7.7.a.1. For a designated facility under paragraph 7.2.a.1 subject to the emissions limits in paragraph 7.3.a.1, the test methods listed in 40 CFR §§ 60.56c(b)(7) and (8), the fugitive emissions testing requirements under 40 CFR §§ 60.56c(b)(14) and (c)(3), the CO CEMS requirements under 40 CFR § 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR §§ 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), (g)(6) through (10), and (h).

7.7.a.2. For a designated facility under paragraphs 7.2.a.1 and 7.2.a.2 subject to the emissions limits in paragraphs 7.3.a.2 and 7.3.a.3, the annual fugitive emissions testing requirements under 40 CFR § 60.56c(c)(3), the CO CEMS requirements under 40 CFR § 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR §§ 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), and (g)(6) through (10). Sources subject to the emissions limits under paragraphs 7.3.a.2 and 7.3.a.3 may, however, elect to use CO CEMS as specified under 40 CFR § 60.56c(c)(4) or bag leak detection systems as specified under 40 CFR § 60.57c(h).

7.7.b. Except as provided in paragraphs 7.7.b.1 and 7.7.b.2, the owner or operator of a small HMIWI unit subject to the emissions limits under subdivision 7.3.b shall comply with the performance testing requirements listed in 40 CFR § 60.56c. The 2,000 pounds per week limitation under subdivision 7.3.b does not apply during performance tests.

7.7.b.1. For a designated facility under paragraph 7.2.a.1 subject to the emissions limits under paragraph 7.3.b.1, the test methods listed in 40 CFR §§ 60.56c(b)(7), (8), (12), (13) (Pb and Cd), and (14), the annual PM, CO, and HCl emissions testing requirements under 40 CFR § 60.56c(c)(2), the annual fugitive emissions testing requirements under 40 CFR § 60.56c(c)(3), the CO CEMS requirements

under 40 CFR § 60.56c(c)(4). The compliance requirements for monitoring listed in 40 CFR §§ 60.56c(c)(5) through (7), and (d) through (k) do not apply.

7.7.b.2. For a designated facility under paragraph 7.2.a.2 subject to the emissions limits under paragraph 7.3.b.2, the annual fugitive emissions testing requirements under 40 CFR § 60.56c(c)(3), the CO CEMS requirements under 40 CFR § 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR §§ 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), and (g)(6) through (10) do not apply. Sources subject to the emissions limits under paragraph 7.3.b.2 may, however, elect to use CO CEMS as specified under 40 CFR § 60.56c(c)(4) or bag leak detection systems as specified under 40 CFR § 60.57c(h).

7.7.c. The owner or operator of a small HMIWI unit subject to the emissions limits under subdivision 7.3.b that is not equipped with an air pollution control device shall comply with the following compliance and performance testing requirements:

7.7.c.1. Establishment of maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits;

7.7.c.2. Following the date on which the initial performance test is completed or is required to be completed under 40 CFR § 60.8, whichever date comes first, the small HMIWI unit shall not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter(s).

7.7.c.3. Operation above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the PM, CO and dioxin/ furan emission limits, except as provided in paragraph 7.7.c.4; and

7.7.c.4. The owner or operator of a small HMIWI unit may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the small HMIWI unit is not in violation of the applicable emission limit(s). Repeat performance tests conducted pursuant to this paragraph shall be conducted under process and control device operating conditions duplicating as nearly as possible those that indicated a violation under paragraph 7.7.c.3;

7.7.d. The owner or operator of a HMIWI unit subject to the emissions limits under subdivisions 7.3.a and 7.3.b shall comply with the requirements for monitoring listed in 40 CFR § 60.57c, except as provided for under subdivision 7.7.e.

7.7.e. The owner or operator of a small HMIWI unit subject to the emissions limits under subdivision 7.3.b that is not equipped with an air pollution control device shall comply with the following monitoring requirements:

7.7.e.1. Installation, calibration (to manufacturer's specifications), maintenance and operation of a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum once every minute throughout operation;

7.7.e.2. Installation, calibration (to manufacturer's specifications), maintenance and operation of a device that automatically measures and records the date, time, and weight of each charge fed into the HMIWI unit;

7.7.e.3. The owner or operator of a HMIWI unit shall obtain monitoring data at all times

during HMIWI unit operation except during periods of monitoring equipment malfunction, calibration or repair. At a minimum, the owner or operator shall obtain valid monitoring data for 75% of the operating hours per day and for 90% of the operating hours per calendar quarter that the HMIWI unit is combusting hospital waste or medical/ infectious waste.

7.7.f. The owner or operator of a designated facility under paragraphs 7.2.a.1 or 7.2.a.2 subject to emissions limits under paragraphs 7.3.a.2, 7.3.a.3 or 7.3.b.2 may use the results of previous emissions tests to demonstrate compliance with the emissions limits, provided that the conditions in paragraphs 7.7.f.1 through 7.7.f.3 are met:

7.7.f.1. The designated facility's previous emissions tests were conducted using the applicable procedures and test methods listed in 40 CFR § 60.56c(b). Previous emissions test results obtained using EPA-accepted voluntary consensus standards are also acceptable.

7.7.f.2. The HMIWI unit at the designated facility is currently operated in a manner (e.g., with charge rate, secondary chamber temperature, etc.) that would be expected to result in the same or lower emissions than observed during the previous emissions test(s). The HMIWI unit may not have been modified such that emissions would be expected to exceed (notwithstanding normal test-to-test variability) the results from previous emissions test(s).

7.7.f.3. The previous emissions test(s) were conducted in 1996 or later.

7.8. Reporting and Recordkeeping Guidelines.

7.8.a. Except as provided in paragraphs 7.8.a.1 and 7.8.a.2, the owner or operator of an existing HMIWI unit shall comply with the reporting and recordkeeping requirements listed in 40 CFR §§ 60.58c(b) through (g).

7.8.a.1. For a designated facility under paragraph 7.2.a.1 subject to emissions limits under paragraphs 7.3.a.1 or 7.3.b.1, excluding 40 CFR §§ 60.58c(b)(2)(ii) (fugitive emissions), (b)(2)(viii) ($NO_X$ reagent), (b)(2)(xvii) (air pollution control device inspections), (b)(2)(xviii) (bag leak detection system alarms), (b)(2)(xix) (CO CEMS data), and (b)(7) (siting documentation).

7.8.a.2. For a designated facility under paragraphs 7.2.a.1 or 7.2.a.2 subject to emissions limits under paragraphs 7.3.a.2, 7.3.a.3 or 7.3.b.2, excluding 40 CFR §§ 60.58c(b)(2)(xviii) (bag leak detection system alarms), (b)(2)(xix) (CO CEMS data), and (b)(7) (siting documentation).

7.8.b. The owner or operator of each HMIWI unit subject to the emissions limits under subsection 7.3 shall:

7.8.b.1. As specified in subsection 7.6, maintain records of the annual equipment inspections that are required for each HMIWI unit subject to the emissions limits under paragraphs 7.3.a.2, 7.3.a.3 and subdivision 7.3.b; the annual air pollution control device inspections that are required for each HMIWI unit subject to the emissions limits under paragraphs 7.3.a.2, 7.3.a.3 and 7.3.b.2; any required maintenance; and any repairs not completed within ten days of an inspection or repair date approved by the Secretary; and

7.8.b.2. Submit an annual report containing information recorded under paragraph 7.8.b.1 no later than 60 days following the year in which data were collected. The owner or operator shall send subsequent reports no later than 12 calendar months following the previous report (once the unit is subject to permitting requirements under 45CSR30, the owner or operator shall submit these reports semiannually). The owner or operator shall sign and certify the report in accordance with subdivision 7.8.c.

7.8.c. Where reports are required to be submitted to the Secretary under the terms of a permit

issued pursuant to 45CSR13, 45CSR14, 45CSR19 or 45CSR30, the owner or operator shall sign and certify the reports in accordance with the requirements of the applicable permitting rule. Where reports are required to be submitted to the Secretary under this rule, and no permit is in effect under 45CSR13, 45CSR14, 45CSR19 or 45CSR30, the facilities manager shall sign the report, which shall contain a certification stating that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

7.9. Compliance times.

7.9.a. Except as provided in subdivisions 7.9.b, 7.9.c and 7.9.d, on or after July 28, 2001, the owner or operator of any existing HMIWI unit subject to the requirements of 40 CFR Part 62, Subpart XX, and the related provisions of 40 CFR Part 60, Subpart Ce, shall be in compliance with all applicable provisions of this section.

7.9.b. No later than November 28, 2000, the owner or operator of an existing HMIWI unit required to install air pollution control equipment shall submit a compliance plan and schedule subject to the approval of the Secretary that meets the following criteria:

7.9.b.1. No later than July 28, 2001, if a facility that plans to install air pollution control equipment other than a dry scrubber followed by a fabric filter, a wet scrubber or dry scrubber followed by a fabric filter and a wet scrubber, the facility shall submit a petition for site specific operating parameters under 40 CFR § 60.56c(i) to the Administrator and the Secretary;

7.9.b.2. The facility shall obtain, no later than July 28, 2001, services of an architectural and engineering firm regarding air pollution device(s);

7.9.b.3. The facility shall order, no later than January 28, 2002, design drawings of an air pollution device(s);

7.9.b.4. The facility shall order, no later than January 28, 2002, air pollution device(s);

7.9.b.5. The facility shall initiate, no later than July 28, 2002, site preparation for installation of the air pollution device(s);

7.9.b.6. The facility shall conduct, no later than April 28, 2002, initial startup of the air pollution device(s);

7.9.b.7. The facility shall conduct, no later than April 28, 2002, initial compliance test(s) of the air pollution device(s); and

7.9.b.8. No later than September 16, 2002, the owner or operator of an existing HMIWI unit shall not allow or cause to be allowed a HMIWI unit to be operated except in compliance with all applicable provisions of this section.

7.9.c. An owner or operator of an existing HMIWI unit who submits in writing to the Secretary a request for an extension to comply beyond the compliance dates under subdivision 7.9.b, shall submit to the Secretary no later than April 28, 2001, the following information:

7.9.c.1. An analysis to support the need for an extension, including an explanation of why a time period up to three years after July 28, 2000 is not sufficient time to comply with subdivision 7.9.b;

7.9.c.2. A demonstration of the feasibility to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

7.9.c.3. Measurable and enforceable incremental steps of progress to be taken towards

compliance with the emission limits contained in Table 45-18A, or Table 45-18C for small rural units, as applicable.

7.9.d. The Secretary will notify the owner or operator of an existing HMIWI, in writing, of his or her decision either to grant or deny the request for extension. The owner or operator shall comply with one of the following:

7.9.d.1. If the request for extension is denied, the owner or operator shall submit a compliance plan in accordance with subdivision 7.9.b no later than 30 days after denial of the request for extension, or July 28, 2001, whichever is later; or

7.9.d.2. If the request for extension is granted, the owner or operator shall submit a compliance plan and schedule commensurate with the granted extension no later than 30 days after the date the request for extension was granted.

7.9.d.3. If an extension is granted by the Secretary, the owner or operator shall comply in an expeditious manner with the 111(d)/129 plan requirements of Part 62, Subpart XX, §§ 62.12150 through 62.12152 on or before the date three years after U.S. EPA approval of the West Virginia 111(d)/129 plan (but not later than September 16, 2002), for the emissions guidelines, and on or before the date three years after U.S. EPA approval of an amended West Virginia 111(d)/129 plan (but not later than October 6, 2014), for the emissions guidelines.

7.9.e. Except as provided in subdivisions 7.9.f, 7.9.g and 7.9.h, one year after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units, the owner or operator of any existing HMIWI unit subject to the requirements of 40 CFR Part 62, Subpart XX, and the related provisions of 40 CFR Part 60, Subpart Ce shall be in compliance with all applicable provisions of this section.

7.9.f. No later than 120 days after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units, the owner or operator of an existing HMIWI unit required to install air pollution control equipment shall submit an expeditious compliance plan and schedule subject to the approval of the Secretary that meets the following criteria:

7.9.f.1. No later than 12 months after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units, a facility that plans to install air pollution control equipment other than a dry scrubber followed by a fabric filter, a wet scrubber or dry scrubber followed by a fabric filter and a wet scrubber shall submit a petition for site specific operating parameters under 40 CFR § 60.56c(i) to the Administrator and the Secretary;

7.9.f.2. The facility shall obtain, no later than 12 months after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units, services of an architectural and engineering firm regarding air pollution device(s);

7.9.f.3. The facility shall order, no later than 18 months after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units, design drawings of an air pollution device(s);

7.9.f.4. The facility shall order, no later than 18 months after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units, air pollution device(s);

7.9.f.5. The facility shall initiate, no later than 18 months after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units, site preparation for installation of the air pollution device(s);

7.9.f.6. The facility shall conduct, no later than 30 months after the effective date of U.S.

EPA's approval of the 111(d)/129 state plan revision for HMIWI units, initial startup of the air pollution device(s);

7.9.f.7. The facility shall conduct, no later than 30 months after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units, initial compliance test(s) of the air pollution device(s); and

7.9.f.8. No later than October 6, 2014, the owner or operator of an existing HMIWI unit shall not allow or cause to be allowed a HMIWI unit to be operated except in compliance with all applicable provisions of this section.

7.9.g. An owner or operator of an existing HMIWI unit who submits in writing to the Secretary a request for an extension to comply beyond the compliance dates under subdivision 7.9.f. shall submit to the Secretary no later than nine months after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units, the following information:

7.9.g.1. An analysis to support the need for an extension, including an explanation of why a time period up to three years after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units is sufficient time to comply with this section, while one year after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units is not sufficient;

7.9.g.2. A demonstration of the feasibility to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

7.9.g.3. Measurable and enforceable incremental steps of progress to be taken towards compliance with the emission limits contained in Table 45-18B, or Table 45-18D for small rural units, as applicable.

7.9.h. The Secretary will notify the owner or operator of an existing HMIWI, in writing, of his or her decision either to grant or deny the request for extension. The owner or operator shall comply with one of the following:

7.9.h.1. If the request for extension is denied, the owner or operator shall submit a compliance plan in accordance with subdivision 7.9.f no later than 30 days after denial of the request for extension or one year after the effective date of U.S. EPA's approval of the 111(d)/129 state plan revision for HMIWI units, whichever is later; or

7.9.h.2. If the request for extension is granted, the owner or operator shall submit a compliance plan and schedule commensurate with the granted extension no later than 30 days after the date the request for extension has been granted; and

7.9.h.3. On or before October 6, 2014, the owner or operator shall comply with the emissions guidelines for existing HMIWI units under 40 CFR Part 62, Subpart XX, and the related provisions of 40 CFR Part 60, Subpart Ce, and not allow or cause to be allowed a HMIWI unit to be operated except in compliance with all applicable provisions of this section.

**§45-18-8. Requirements for new commercial and industrial solid waste incinerators.**

8.1. Requirements for new CISWI units. -- The owner or operator of a commercial and industrial solid waste incineration unit (CISWI unit) under subsection 8.2 shall comply with all applicable standards of performance, requirements, and provisions of 40 CFR Part 60 Subpart CCCC, including any reference methods, performance specifications, and other test methods associated with Subpart CCCC. No person shall construct, reconstruct, modify or operate, or cause to be constructed, reconstructed, modified or operated a new CISWI unit that results in a violation of 40 CFR Part 60 Subpart CCCC or this rule.

8.2. Applicability. -- The owner or operator of a CISWI unit that meets any of the following criteria is subject to the requirements for new CISWI units set forth in section 8:

8.2.a. A CISWI unit that commenced construction after June 4, 2010; or

8.2.b. A CISWI unit that commenced reconstruction or modification after August 7, 2013; or

8.2.c. An Incinerator and air curtain incinerator, that commenced construction after November 30, 1999, but no later than June 4, 2010, or that commenced reconstruction or modification on or after June 1, 2001, but no later than August 7, 2013, are considered new incineration units and remain subject to the applicable requirements of this section until such time the unit becomes subject to section 9 of this rule; and

8.2.d. The incineration unit does not meet the exemption criteria under 40 CFR § 60.2020.

8.3. Physical or Operational Changes. -- Physical or operational changes to an incineration unit primarily to comply with the emission guidelines in section 9 of this rule and 40 CFR Part 60, Subpart DDDD do not qualify as a reconstruction or modification under section 8.

**§45-18-9. Requirements for existing commercial and industrial solid waste incinerators.**

9.1. Requirements for existing CISWI units. -- The owner or operator of an existing CISWI unit shall comply with the applicable emission guidelines, compliance times, requirements, and provisions of 40 CFR Part 60 Subpart DDDD set forth in section 9 and Tables 45-18E, 45-18F, 45-18G, 45-18H, 45-18I, 45-18J, 45-18K, 45-18L and 45-18M, including any reference methods, performance specifications, and other test methods associated with Subpart DDDD. No person shall reconstruct, modify or operate, or cause to be reconstructed, modified or operated, an existing CISWI unit that results in a violation of the requirements for existing CISWI units set forth in section 9.

9.2. Applicability.

9.2.a. Incineration units that meet all three criteria described in paragraphs 9.2.a.1 through 9.2.a.3 are subject to the requirements for existing CISWI units under section 9.

9.2.a.1. CISWI units and air curtain incinerators in West Virginia that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013;

9.2.a.2. Incineration units that meet the definition of a CISWI unit as defined in subsection 2.4 of this rule and

9.2.a.3. Incineration units not exempt under subdivision 9.2.d below.

9.2.b. Physical or operational changes.

9.2.b.1. If the owner or operator of a CISWI unit or air curtain incinerator makes changes that meet the definition of modification or reconstruction after August 7, 2013, the CISWI unit becomes subject to 40 CFR Part 60, Subpart CCCC under section 8 of this rule, and the requirements for existing CISWI units under section 9 no longer apply to that unit.

9.2.b.2. If the owner or operator of a CISWI unit makes physical or operational changes to an existing CISWI unit primarily to comply with the requirements of section 9, the requirements for new CISWI units under section 8 of this rule and 40 CFR Part 60, Subpart CCCC do not apply to that unit. Such changes do not qualify as modifications or reconstructions under section 8 of this rule and 40 CFR Part 60, Subpart CCCC.

9.2.c. Reserved.

9.2.d. Exemption. -- The types of units described in paragraphs 9.2.d.1, 9.2.d.3 through 9.2.d.9, and 9.2.d.13 through 9.2.d.15 are exempt from the requirements of section 9, but some units are required to provide notifications. Air curtain incinerators are exempt from the requirements of subsection 13.3 and section 9 except for the provisions set forth in subdivisions 9.13.l and 9.13.n.

9.2.d.1. Pathological waste incineration units. -- Incineration units burning 90% or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste are not subject to section 9 if the unit meets the requirements specified in subparagraphs 9.2.d.1.A and 9.2.d.1.B below:

9.2.d.1.A. Notify the Secretary that the unit meets these criteria; and

9.2.d.1.B. Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned and the weight of all other fuels and wastes burned in the unit.

9.2.d.2. Reserved.

9.2.d.3. Municipal waste combustion units. -- Incineration units that are subject to Subpart Ea of 40 CFR Part 60 (Standards of Performance for Municipal Waste Combustors); Subpart Eb of 40 CFR Part 60 (Standards of Performance for Large Municipal Waste Combustors); Subpart Cb of 40 CFR Part 60 (Emission Guidelines and Compliance Time for Large Municipal Combustors); Subpart AAAA of 40 CFR Part 60 (Standards of Performance for Small Municipal Waste Combustion Units); or Subpart BBBB of 40 CFR Part 60 (Emission Guidelines for Small Municipal Waste Combustion Units).

9.2.d.4. Medical waste incineration units. -- Incineration units regulated under Subpart Ec of 40 CFR Part 60 (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) or Subpart Ca of 40 CFR Part 60 (Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators).

9.2.d.5. Small power production facilities. -- Units that meet the requirements specified below:

9.2.d.5.A. The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. § 796(17)(C));

9.2.d.5.B. The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity;

9.2.d.5.C. The owner or operator submits documentation to the Administrator and Secretary that the qualifying small power production facility is combusting homogenous waste; and

9.2.d.5.D. The owner or operator maintains the records specified in subdivision 9.11.v. below.

9.2.d.6. Cogeneration facilities. -- Units that meet the requirements specified below:

9.2.d.6.A. The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. § 796(18)(B));

9.2.d.6.B. The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating or cooling

purposes;

9.2.d.6.C. The unit submits documentation to the Administrator and Secretary that the qualifying cogeneration facility is combusting homogenous waste; and

9.2.d.6.D. The unit maintains the records specified in subdivision 9.11.w. below.

9.2.d.7. Hazardous waste combustion units. -- Units for which the owner or operator is required to get a permit under section 3005 of the Solid Waste Disposal Act.

9.2.d.8. Materials recovery units. -- Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters.

9.2.d.9. Air curtain incinerators. -- Air curtain incinerators that burn only the materials listed in subparagraphs 9.2.d.9.A through 9.2.d.9.C are only required to meet the requirements for air curtain incinerators set forth in subsections 9.13 and 13.3. below:

9.2.d.9.A. 100% wood waste.

9.2.d.9.B. 100% clean lumber.

9.2.d.9.C. 100% mixture of only wood waste, clean lumber, and/or yard waste.

9.2.d.10. Reserved.

9.2.d.11. Reserved.

9.2.d.12. Reserved.

9.2.d.13. Sewage treatment plants. -- Incineration units regulated under Subpart O of 40 CFR Part 60 (Standards of Performance for Sewage Treatment Plants) and 45CSR16.

9.2.d.14. Sewage sludge incineration units. -- Incineration units combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter that are subject to Subpart LLLL of 40 CFR Part 60 (Standards of Performance for Sewage Sludge Incineration Units) or Subpart MMMM of 40 CFR Part 60 (Emission Guidelines for Sewage Sludge Incineration Units).

9.2.d.15. Other solid waste incineration units. -- Incineration units that are subject to Subpart EEEE of 40 CFR Part 60 (Standards of Performance for Other Solid Waste Incineration Units) or Subpart FFFF of 40 CFR Part 60 (Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units).

9.3. Compliance times and increments of progress.

9.3.a. For CISWI units in the incinerator subcategory and air curtain incinerators that commenced construction on or before November 30, 1999, such CISWI units shall achieve final compliance as expeditiously as practicable after approval of the West Virginia § 111(d)/129 plan but not later than December 1, 2005.

9.3.b. For CISWI units in the incinerator subcategory and air curtain incinerators that commenced construction after November 30, 1999, but on or before June 4, 2010 or that commenced reconstruction or modification on or after June 1, 2001 but no later than August 7, 2013, and for CISWI units in the small remote incinerator, energy recovery unit, and waste-burning kiln subcategories that commenced construction before June 4, 2010, such CISWI units shall achieve final compliance as

expeditiously as practicable after approval of the West Virginia § 111(d)/129 plan but not later than February 7, 2018.

9.3.c. Owners and operators of existing CISWI units that have compliance schedules more than one year following the effective date of West Virginia's CAA § 111(d)/129 plan approval are subject to the increments of progress set forth in subdivision 9.3.e.

9.3.d. Reserved.

9.3.e. Increments of progress. -- The owner or operator of an existing CISWI unit that cannot achieve compliance within one year after the effective date of West Virginia § 111(d)/129 plan approval shall comply with the increments of progress set forth in Table 45-18E.

9.3.f. Notification of achievement of increments of progress shall include the following three items:

9.3.f.1. Notification that the increment of progress has been achieved;

9.3.f.2. Any items required to be submitted with each increment of progress; and

9.3.f.3. Signature of the owner or operator of the CISWI unit.

9.3.g. Notifications for achieving increments of progress shall be postmarked no later than ten business days after the compliance date for the increment.

9.3.h. If the unit fails to meet an increment of progress, the owner or operator shall submit a notification to the Secretary postmarked within ten business days after the date for that increment of progress in subdivision 9.3.e. The owner or operator shall inform the Secretary that the unit did not meet the increment and shall continue to submit reports each subsequent calendar month until the unit meets the increment of progress.

9.3.i. For control plan increment of progress, the owner or operator shall satisfy the following requirements:

9.3.i.1. Submit the final control plan that includes the five items described below:

9.3.i.1.A. A description of the devices for air pollution control and process changes that the owner or operator will use to comply with the emission limitations and other requirements of section 9;

9.3.i.1.B. The type(s) of waste to be burned;

9.3.i.1.C. The maximum design waste burning capacity;

9.3.i.1.D. The anticipated maximum charge rate; and

9.3.i.1.E. If applicable, the petition for site-specific operating limits under subdivision 9.6.l; and

9.3.i.2. Maintain an onsite copy of the final control plan.

9.3.j. For the final compliance increment of progress, the owner or operator shall complete all process changes and retrofit construction of control devices as specified in the final control plan so that, if the affected CISWI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

9.3.k. If the owner or operator closes the CISWI unit but will restart it prior to the final compliance date set forth in subdivision 9.3.b, the owner or operator shall meet the increments of progress set forth in subdivision 9.3.e.

9.3.l. If the owner or operator closes the CISWI unit but will restart it after the final compliance date set forth in subdivision 9.3.b, the owner or operator shall complete emission control retrofits and meet the emission limitations and operating limits on the date the unit restarts operation.

9.3.m. If the owner or operator plans to permanently close the CISWI unit rather than comply with section 9, the owner or operator shall submit a closure notification, including the date of closure, to the Secretary by the date the final control plan is due.

9.4. Waste Management Plan. -- A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

9.4.a. The owner or operator shall submit a waste management plan to the Secretary no later than the date specified in Table 45-18E for submittal of the final control plan.

9.4.b. A waste management plan shall include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries or metals or the use of recyclable materials. The plan shall identify any additional waste management measures, and the source shall implement those measures considered practical and feasible based on the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

9.5. Operator training and qualification.

9.5.a. No CISWI unit shall be operated unless a fully trained and qualified CISWI unit operator is accessible, either at the facility or within one hour of travel time from the facility. The trained and qualified CISWI unit operator may operate the CISWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified CISWI unit operators are temporarily not accessible, the unit shall follow the procedures in subdivision 9.5.k below.

9.5.b. Operator training and qualification shall be obtained by completing an incinerator operator training course that includes, at a minimum, the elements described below:

9.5.b.1. Training on the following subjects:

9.5.b.1.A. Environmental concerns, including types of emissions;

9.5.b.1.B. Basic combustion principles, including products of combustion;

9.5.b.1.C. Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures;

9.5.b.1.D. Combustion controls and monitoring;

9.5.b.1.E. Operation of air pollution control equipment and factors affecting performance (if applicable);

9.5.b.1.F. Inspection and maintenance of the incinerator and air pollution control devices;

9.5.b.1.G. Actions to prevent and correct malfunctions or to prevent conditions that may lead to malfunctions;

9.5.b.1.H. Bottom and fly ash characteristics and handling procedures;

9.5.b.1.I. Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards;

9.5.b.1.J. Pollution prevention; and

9.5.b.1.K. Waste management practices.

9.5.b.2. An examination designed and administered by the instructor of the incinerator operator training course; and

9.5.b.3. Written material covering the training course topics that can serve as reference material following completion of the course.

9.5.c. The operator training course shall be completed by the later of the following three dates:

9.5.c.1. The final compliance date set forth in subdivision 9.3.b.;

9.5.c.2. Six months after CISWI unit startup; or

9.5.c.3. Six months after an employee assumes responsibility for operating the CISWI unit or assumes responsibility for supervising the operation of the CISWI unit.

9.5.d. The owner or operator shall obtain operator qualification by completing a training course that satisfies the criteria under subdivision 9.5.b.

9.5.e. Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under paragraph 9.5.b.2.

9.5.f. To maintain qualification, the owner or operator shall complete an annual review or refresher course covering, at a minimum, the topics described below:

9.5.f.1. Update of regulations;

9.5.f.2. Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling;

9.5.f.3. Inspection and maintenance;

9.5.f.4. Prevention and correction of malfunctions or conditions that may lead to malfunction; and

9.5.f.5. Discussion of operating problems encountered by attendees.

9.5.g. The owner or operator shall renew a lapsed operator qualification by one of the methods specified below:

9.5.g.1. For a lapse of less than three years, the owner or operator shall complete a standard annual refresher course described in subdivision 9.5.f.; or

9.5.g.2. For a lapse of three years or more, the owner or operator shall repeat the initial

qualification requirements set forth in subdivision 9.5.d.

9.5.h. Documentation shall be available at the facility and readily accessible for all CISWI unit operators that addresses the topics described in paragraphs 9.5.h.1 through 9.5.h.10 below. The owner or operator shall maintain this information and the training records required by subdivision 9.5.j in a manner that they can be readily accessed and are suitable for inspection upon request.

9.5.h.1. Summary of the applicable standards under section 9;

9.5.h.2. Procedures for receiving, handling, and charging waste;

9.5.h.3. Incinerator startup, shutdown, and malfunction procedures;

9.5.h.4. Procedures for maintaining proper combustion air supply levels;

9.5.h.5. Procedures for operating the incinerator and associated air pollution control systems within the standards established under section 9;

9.5.h.6. Monitoring procedures for demonstrating compliance with the incinerator operating limits;

9.5.h.7. Reporting and recordkeeping procedures;

9.5.h.8. The waste management plan required under subsection 9.4.;

9.5.h.9. Procedures for handling ash; and

9.5.h.10. A list of the wastes burned during the performance test.

9.5.i. The owner or operator shall establish a program for reviewing the information listed in subdivision 9.5.h with each incinerator operator.

9.5.i.1. The initial review of the information listed in subdivision 9.5.h shall be conducted by the later of the three dates specified below:

9.5.i.1.A. The final compliance date set forth in subdivision 9.3.b.;

9.5.i.1.B. Six months after CISWI unit startup; or

9.5.i.1.C. Six months after being assigned to operate the CISWI unit.

9.5.i.2. The owner or operator shall conduct subsequent annual reviews of the information listed in subdivision 9.5.h no later than 12 months following the previous review.

9.5.j. The owner or operator shall also maintain the information specified below:

9.5.j.1. Records showing the names of CISWI unit operators who have completed review of the information in subdivision 9.5.h as required by subdivision 9.5.i, including the date of the initial review and all subsequent annual reviews;

9.5.j.2. Records showing the names of the CISWI operators who have completed the operator training requirements under subsection 9.5, met the criteria for qualification under subdivision 9.5.d, and maintained or renewed their qualification under subdivision 9.5.f or subdivision 9.5.g. Records shall include documentation of training, the dates of the initial refresher training, the dates of their qualifications, and all subsequent renewals of such qualifications; and

9.5.j.3. For each qualified operator, the phone and/or cell phone number at which they can be reached during operating hours.

9.5.k. If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within one hour), the owner or operator shall either, depending on the length of time that a qualified operator is not accessible:

9.5.k.1. When all qualified operators are not accessible for more than eight hours, but less than two weeks, the CISWI unit may be operated by other plant personnel familiar with the operation of the CISWI unit who have completed a review of the information specified in subdivision 9.5.h within the past 12 months; however, the owner or operator shall record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under subdivision 9.12.e.; or

9.5.k.2. When all qualified operators are not accessible for two weeks or more, the owner or operator shall take both actions that are described below:

9.5.k.2.A. Notify the Secretary in writing within ten days of this deviation. In the notice, state what caused this deviation, what the owner or operator is doing to ensure that a qualified operator is accessible, and when the owner or operator anticipates that a qualified operator will be accessible; and

9.5.k.2.B. Submit a status report to the Administrator and Secretary every four weeks outlining what the owner or operator is doing to ensure that a qualified operator is accessible, stating when the owner or operator anticipates that a qualified operator will be accessible and requesting approval from the Administrator and Secretary to continue operation of the CISWI unit. The owner or operator shall submit the first status report four weeks after notification to the Administrator and the Secretary of the deviation under subparagraph 9.5.k.2.A. If the Administrator and Secretary notifies the owner or operator that the request to continue operation of the CISWI unit is disapproved, the CISWI unit may continue operation for 90 days, then shall cease operation. Operation of the unit may resume if the owner or operator meets the following requirements:

9.5.k.2.B.1. A qualified operator is accessible as required under subdivision 9.5.a.; and

9.5.k.2.B.2. The owner or operator notifies the Administrator and Secretary that a qualified operator is accessible and that operations are resuming.

9.6. Emission limitations and operating limits.

9.6.a. The owner or operator shall meet the emission limitations for each CISWI unit, including bypass stack or vent, specified in Table 45-18F or Tables 45-18J through 45-18M, by the final compliance date set forth subdivision 9.3.b. The emission limitations apply at all times the unit is operating including and not limited to startup, shutdown or malfunction.

9.6.b. Units that do not use wet scrubbers shall maintain opacity to less than or equal to the percent opacity (three one-hour blocks consisting of ten six-minute average opacity values) specified in Table 45-18F as applicable.

9.6.c. If the owner or operator uses a wet scrubber(s) to comply with the emission limitations, the owner or operator shall establish operating limits for up to four operating parameters (as specified in Table 45-18G) as described in paragraphs 9.6.c.1 through 9.6.c.4 during the initial performance test:

9.6.c.1. Maximum charge rate, calculated using one of the two procedures below, as appropriate:

9.6.c.1.A. For continuous and intermittent units, maximum charge rate is 110% of the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations; or

9.6.c.1.B. For batch units, maximum charge rate is 110% of the daily charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

9.6.c.2. Minimum pressure drop across the wet particulate matter scrubber, which is calculated as the lowest one-hour average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as the lowest one-hour average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations;

9.6.c.3. Minimum scrubber liquid flow rate, which is calculated as the lowest one-hour average liquid flow rate at the inlet to the wet acid gas or particulate matter scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations; and/or

9.6.c.4. Minimum scrubber liquor pH, which is calculated as the lowest one-hour average liquor pH at the inlet to the wet acid gas scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride (HCl) emission limitation.

9.6.d. The owner or operator shall meet the operating limits established during the initial performance test on the date the initial performance test is required or completed (whichever is earlier). The owner or operator shall conduct an initial performance evaluation of each continuous monitoring system and continuous parameter monitoring system within 60 days of installation of the monitoring system.

9.6.e. If the owner or operator uses a fabric filter to comply with the emission limitations, the owner or operator shall operate each fabric filter system such that the bag leak detection system alarm does not sound more than five percent of the operating time during a six-month period. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of one hour. If the owner or operator takes longer than one hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken to initiate corrective action.

9.6.f. If the owner or operator uses an electrostatic precipitator to comply with the emission limitations, the owner or operator shall measure the (secondary) voltage and amperage of the electrostatic precipitator collection plates during the particulate matter performance test. Calculate the average electric power value (secondary voltage × secondary current = secondary electric power) for each test run. The operating limit for the electrostatic precipitator is calculated as the lowest one-hour average secondary electric power measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

9.6.g. If the owner or operator uses activated carbon sorbent injection to comply with the emission limitations, the owner or operator shall measure the sorbent flow rate during the performance testing. The operating limit for the carbon sorbent injection is calculated as the lowest one-hour average sorbent flow rate measured during the most recent performance test demonstrating compliance with the mercury emission limitations. For energy recovery units, when the unit operates at lower loads, multiply the sorbent injection rate by the load fraction, as defined in 40 CFR § 60.2265, to determine the required injection rate (e.g., for 50% load, multiply the injection rate operating limit by 0.5).

9.6.h. If the owner or operator uses selective noncatalytic reduction to comply with the emission limitations, the owner or operator shall measure the charge rate, the secondary chamber temperature (if

applicable to the CISWI unit), and the reagent flow rate during the nitrogen oxides performance testing. The operating limits for the selective noncatalytic reduction are calculated as the highest one-hour average charge rate, lowest secondary chamber temperature, and lowest reagent flow rate measured during the most recent performance test demonstrating compliance with the nitrogen oxides emission limitations.

9.6.i. If the owner or operator uses a dry scrubber to comply with the emission limitations, the owner or operator shall measure the injection rate of each sorbent during the performance testing. The operating limit for the injection rate of each sorbent is calculated as the lowest one-hour average injection rate of each sorbent measured during the most recent performance test demonstrating compliance with the hydrogen chloride emission limitations. For energy recovery units, when the unit operates at lower loads, multiply the sorbent injection rate by the load fraction, as defined in 40 CFR § 60.2265, to determine the required injection rate (e.g., for 50% load, multiply the injection rate operating limit by 0.5).

9.6.j. If the owner or operator does not use a wet scrubber, electrostatic precipitator, or fabric filter to comply with the emission limitations, and if the owner or operator does not determine compliance with particulate matter emission limitation with a particulate matter CEMS, the unit shall maintain opacity to less than or equal to ten percent opacity (one-hour block average).

9.6.k. If the owner or operator uses a PM CPMS to demonstrate compliance, the owner or operator shall establish a PM CPMS operating limit and determine compliance with it according to paragraphs 9.6.k.1 through 9.6.k.5 below:

9.6.k.1. During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, record all hourly average output values (milliamps, or the digital signal equivalent) from the PM CPMS for the periods corresponding to the test runs (e.g., three one-hour average PM CPMS output values for three one-hour test runs).

9.6.k.1.A. The PM CPMS shall provide a 4-20 milliamp output, or digital signal equivalent, and the establishment of its relationship to manual reference method measurements shall be determined in units of milliamps or digital bits.

9.6.k.1.B. The PM CPMS operating range shall be capable of reading PM concentrations from zero to a level equivalent to at least two times the allowable emission limit. If the PM CPMS is an auto-ranging instrument capable of multiple scales, the primary range of the instruments shall be capable of reading PM concentration from zero to a level equivalent to two times your allowable emission limit.

9.6.k.1.C. During the initial performance test or any subsequent performance test that demonstrates compliance with the PM limit, record and average all milliamp output values, or their digital equivalent, from the PM CPMS for the periods corresponding to the compliance test runs (e.g., average all PM CPMS output values for three corresponding two-hour Method 5I test runs).

9.6.k.2. If the average of the three PM performance test runs are below 75% of the facility's PM emission limit, the owner or operator shall calculate an operating limit by establishing a relationship of PM CPMS signal to PM concentration using the PM CPMS instrument zero, the average PM CPMS values corresponding to the three compliance test runs, and the average PM concentration from the Method 5 or performance test with the procedures in paragraphs 9.6.k.1 through 9.6.k.5.

9.6.k.2.A. Determine the facility's instrument zero output with one of the following procedures:

9.6.k.2.A.1. Zero point data for in-situ instruments should be obtained by removing the instrument from the stack and monitoring ambient air on a test bench.

9.6.k.2.A.2. Zero point data for extractive instruments should be obtained by

removing the extractive probe from the stack and drawing in clean ambient air.

9.6.k.2.A.3. The zero point can also be established by performing manual reference method measurements when the flue gas is free of PM emissions or contains very low PM concentrations (e.g., when the process is not operating, but the fans are operating or the source is combusting only natural gas) and plotting these with the compliance data to find the zero intercept.

9.6.k.2.A.4. If none of the steps in parts 9.6.k.2.A.1 through 9.6.k.2.A.3 are possible, the owner or operator shall use a zero output value provided by the manufacturer.

9.6.k.2.B. The owner or operator shall determine its PM CPMS instrument average in milliamps, or the digital equivalent, and the average of the corresponding three PM compliance test runs, using Equation 1:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} X_1, \qquad \bar{y} = \frac{1}{n}\sum_{i=1}^{n} Y_1 \quad Equation\ 1$$

Where:

$X_1$ = the PM CPMS data points for the three runs constituting the performance test,

$Y_1$ = the PM concentration value for the three runs constituting the performance test, and
n = the number of data points.

9.6.k.2.C. With the instrument zero expressed in milliamps, or the digital equivalent, the three run average PM CPMS milliamp value, or its digital equivalent, and the three run average PM concentration from your three compliance tests, determine a relationship of mg/dscm per milliamp or digital signal equivalent, with Equation 2.

$$R = \frac{Y_1}{(X_1 - z)} \qquad Equation\ 2$$

Where:

R = the relative mg/dscm per milliamp, or the digital equivalent, for your PM CPMS,
$Y_1$ = the three run average mg/dscm PM concentration,
$X_1$ = the three run average milliamp output or digital equivalent, from the PM CPMS, and
z = the milliamp equivalent or digital signal equivalent of the instrument zero determined from subparagraph 9.6.k.2.A.

9.6.k.2.D. Determine the source specific 30-day rolling average operating limit using the mg/dscm per milliamp value, or per digital signal equivalent, from Equation 2 in Equation 3, below. This sets the operating limit at the PM CPMS output value corresponding to 75% of the emission limit.

$$O_l = z + \frac{0.75(L)}{R} \quad Equation\ 3$$

Where:

$O_l$ = the operating limit for the PM CPMS on a 30-day rolling average, in milliamps or their digital signal equivalent.
L = the source emission limit expressed in mg/dscm,
z = the instrument zero in milliamps or digital equivalent, determined from subparagraph 9.6.k.2.A, and
R = the relative mg/dscm per milliamp, or per digital signal output equivalent, for the PM CPMS, from

Equation 2.

9.6.k.3. If the average of the three PM compliance test runs is at or above 75% of the PM emission limit the owner or operator shall determine the operating limit by averaging the PM CPMS milliamp or digital signal output corresponding to the three PM performance test runs that demonstrate compliance with the emission limit using Equation 4, and the owner or operator shall submit all compliance test and PM CPMS data according to the reporting requirements in paragraph 9.6.k.5.

$$O_h = \frac{1}{n}\sum_{i=1}^{n} X_1 \quad Equation\ 4$$

Where:

$X_1$ = the PM CPMS data points for all runs i,
n = the number of data points, and
$O_h$ = the site specific operating limit, in milliamps or digital signal equivalent.

9.6.k.4. To determine continuous compliance, the owner or operator shall record the PM CPMS output data for all periods when the process is operating and the PM CPMS is not out-of-control. The owner or operator shall demonstrate continuous compliance by using all quality-assured hourly average data collected by the PM CPMS for all operating hours to calculate the arithmetic average operating parameter in units of the operating limit (e.g., milliamps or digital signal bits, PM concentration, raw data signal) on a 30-day rolling average basis.

9.6.k.5. For PM performance test reports used to set a PM CPMS operating limit, the electronic submission of the test report shall also include the make and model of the PM CPMS instrument, serial number of the instrument, analytical principle of the instrument (e.g., beta attenuation), span of the instrument's primary analytical range, milliamp or digital signal value equivalent to the instrument zero output, technique by which this zero value was determined, and the average milliamp or digital signals corresponding to each PM compliance test run.

9.6.l. If the owner or operator uses an air pollution control device other than a wet scrubber, activated carbon injection, selective noncatalytic reduction, fabric filter, an electrostatic precipitator or a dry scrubber or limit emissions in some other manner, including mass balances, to comply with the emission limitations under subdivisions 9.6.a and 9.6.b, the owner or operator shall petition the Secretary for specific operating limits to be established during the initial performance test and continuously monitored thereafter. The owner or operator shall submit the petition at least 60 days before the performance test is scheduled to begin. The owner's or operator's petition shall include the following five items:

9.6.l.1. Identification of the specific parameters the owner or operator proposes to use as additional operating limits;

9.6.l.2. A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters and how limits on these parameters will serve to limit emissions of regulated pollutants;

9.6.l.3. A discussion of how the owner or operator will establish the upper and/or lower values for these parameters which will establish the operating limits on these parameters;

9.6.l.4. A discussion identifying the methods the owner or operator will use to measure and the instruments the owner or operator will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and

9.6.1.5. A discussion identifying the frequency and methods for recalibrating the instruments the owner or operator will use for monitoring these parameters.

9.6.m. Reserved.

9.6.n. Reserved.

9.7. Performance testing.

9.7.a. All performance tests shall consist of a minimum of three test runs conducted under conditions representative of normal operations.

9.7.b. The owner or operator shall document that the waste burned during the performance test is representative of the waste burned under normal operating conditions by maintaining a log of the quantity of waste burned (as required in paragraph 9.11.b.1) and the types of waste burned during the performance test.

9.7.c. The owner or operator shall conduct all performance tests using the minimum run duration specified in Table 45-18Fand Tables 45-18J through 45-18M.

9.7.d. The owner or operator shall use Method 1 of 40 CFR Part 60, Appendix A to select the sampling location and number of traverse points.

9.7.e. The owner or operator shall use Method 3A or 3B of 40 CFR Part 60, Appendix A for gas composition analysis, including measurement of oxygen concentration. The owner or operator shall use Method 3A or 3B of Appendix A simultaneously with each method.

9.7.f. All pollutant concentrations, except for opacity, shall be adjusted to seven percent oxygen using Equation 5:

$$C_{adj} = C_{meas}\frac{(20.9-7)}{(20.9-\%O_2)} \quad Equation\ 5$$

Where:

$C_{adj}$ = pollutant concentration adjusted to seven percent (7%) oxygen;
$C_{meas}$ = pollutant concentration measured on a dry basis;
(20.9 - 7) = 20.9% oxygen – 7% oxygen (defined oxygen correction basis);
20.9 = oxygen concentration in air, percent; and
$\%O_2$ = oxygen concentration measured on a dry basis, percent.

9.7.g. The owner or operator shall determine dioxins/furans toxic equivalency by following the procedures in paragraphs 9.7.g.1 through 9.7.g.4 below:

9.7.g.1. Measure the concentration of each dioxin/furan tetra- through octa-isomer emitted using EPA Method 23 at 40 CFR Part 60, Appendix A and 45CSR16.

9.7.g.2. Quantify isomers meeting identification criteria 2, 3, 4, and 5 in Section 5.3.2.5 of Method 23, regardless of whether the isomers meet identification criteria 1 and 7. The owner or operator shall quantify the isomers per section 9.0 of Method 23 (Note: The owner or operator may reanalyze the sample aliquot or split to reduce the number of isomers not meeting identification criteria 1 or 7 of section 5.3.2.5 of Method 23).

9.7.g.3. For each dioxin/furan (tetra through octa-chlorinated) isomer measured in

accordance with paragraphs 9.7.g.1 and 9.7.g.2, multiply the isomer concentration by its corresponding toxic equivalency factor specified in Table 45-18H.

9.7.g.4. Sum the products calculated in accordance with paragraph 9.7.g.3 to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

9.7.h. The owner or operator shall use Method 22 at 40 CFR Part 60, Appendix A-7 and 45CSR16 to determine compliance with the fugitive ash emission limit in Table 45-18F or Tables 45-18J through 45-18M.

9.7.i. If the facility has an applicable opacity operating limit, the owner or operator shall determine compliance with the opacity limit using Method 9 at 40 CFR Part 60, Appendix A-4 and 45CSR16, based on three one-hour blocks consisting of ten six-minute average opacity values, unless the owner or operator is required to install a continuous opacity monitoring system, consistent with subdivisions 9.9.a through 9.9.w and subdivisions 9.10.a through 9.10.r of this rule.

9.7.j. The owner or operator shall determine dioxins/furans total mass basis by following the procedures in paragraphs 9.7.j.1 through 9.7.j.3 below:

9.7.j.1. Measure the concentration of each dioxin/furan tetra- through octa-chlorinated isomer emitted using EPA Method 23 at 40 CFR Part 60, Appendix A-7 and 45CSR16.

9.7.j.2. Quantify isomers meeting identification criteria 2, 3, 4, and 5 in Section 5.3.2.5 of Method 23, regardless of whether the isomers meet identification criteria 1 and 7. You shall quantify the isomers per Section 9.0 of Method 23 (Note: The owner or operator may reanalyze the sample aliquot or split to reduce the number of isomers not meeting identification criteria 1 or 7 of Section 5.3.2.5 of Method 23).

9.7.j.3. Sum the quantities measured in accordance with paragraphs 9.7.j.1 and 9.7.j.2 to obtain the total concentration of dioxins/furans emitted in terms of total mass basis.

9.7.k. The owner or operator shall use results of performance tests to demonstrate compliance with the emission limitations in Table 45-18F or Tables 45-18J through 45-18M.

9.8. Initial compliance requirements.

9.8.a. The owner or operator shall conduct a performance test, as required under subsection 9.7 through paragraph 9.7.j.3 and subdivisions 9.6.a. and 9.6.b, to determine compliance with the emission limitations in Table 45-18F and Tables 45-18J through 45-18M, to establish compliance with any opacity operating limits in subdivisions 9.6.a. through paragraph 9.6.k.5, and to establish operating limits using the procedures in subdivision 9.6.c through paragraph 9.6.k.5 or subdivisions 9.6.l through 9.6.m. The owner or operator shall conduct the performance test using the test methods listed in Table 45-18F and Tables 45-18J through 45-18M and the procedures in subsection 9.7 through paragraph 9.7.j.3. The use of the bypass stack during a performance test shall invalidate the performance test. The owner or operator shall conduct a performance evaluation of each continuous monitoring system within 60 days of installation of the monitoring system.

9.8.b. The owner or operator shall conduct the initial performance test no later than 180 days after the final compliance date set forth in subdivision 9.3.b .

9.8.c. If the owner or operator commences or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility and conducted a test consistent with the provisions of section 9 while combusting the given solid waste within the six months preceding the reintroduction of that solid waste in the combustion chamber, not need to retest until six months from the date of reintroduction of that solid waste.

9.8.d. If the owner or operator commences combusting or recommences combusting a solid waste at an existing combustion unit at any commercial or industrial facility and the owner or operator has not conducted a performance test consistent with the provisions of section 9 while combusting the given solid waste within the six months preceding the reintroduction of that solid waste in the combustion chamber, the owner or operator shall conduct a performance test within 60 days commencing or recommencing solid waste combustion.

9.8.e. The owner or operator shall conduct the initial air pollution control device inspection within 60 days after installation of the control device and the associated CISWI unit reaches the charge rate at which it will operate, but no later than 180 days after the final compliance date for meeting the amended emission limitations.

9.8.f. Within ten operating days following an air pollution control device inspection, the owner or operator shall complete all necessary repairs, unless the owner or operator obtains written approval from the Secretary establishing a date whereby all necessary repairs of the designated facility shall be completed.

9.9. Continuous compliance requirements.

9.9.a. Compliance with standards.

9.9.a.1. The emission standards and operating requirements set forth in section 9 apply at all times.

9.9.a.2. If the facility ceases combusting solid waste, the owner or operator may opt to remain subject to the provisions of section 9. Consistent with the definition of CISWI unit, the owner or operator is subject to the requirements of section 9 at least six months following the last date of solid waste combustion. Solid waste combustion is ceased when solid waste is not in the combustion chamber (i.e., the solid waste feed to the combustor has been cut off for a period of time not less than the solid waste residence time).

9.9.a.3. If the facility ceases combusting solid waste, the owner or operator shall comply with any newly applicable standards on the effective date of the waste-to-fuel switch. The effective date of the waste-to-fuel switch is a date selected by the owner or operator, which shall be at least six months from the date that the facility ceased combusting solid waste, consistent with paragraph 9.9.a.2. The source shall remain in compliance with section 9 until the effective date of the waste-to-fuel switch.

9.9.a.4. If the owner or operator owns or operates an existing commercial or industrial combustion unit that combusted a fuel or non-waste material, and the owner or operator commences or recommences combustion of solid waste, the owner or operator is subject to the provisions of section 9 as of the first day of introduction or reintroduction of solid waste to the combustion chamber, and this date constitutes the effective date of the fuel-to-waste switch. The owner or operator shall complete all initial compliance demonstrations for any § 112 CAA standards that are applicable to the facility before commencement or recommencement of combustion of solid waste. The owner or operator shall provide 30 days prior notice to the Secretary of the effective date of the waste-to-fuel switch. The notification shall identify:

9.9.a.4.A. The name of the owner or operator of the CISWI unit, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

9.9.a.4.B. The currently applicable subcategory under section 9 and any 40 CFR Part 63 Subpart and Subcategory that will be applicable after the owner or operator ceases combusting solid waste;

9.9.a.4.C. The fuel(s), non-waste material(s), and solid waste(s) the CISWI unit is currently combusting and has combusted over the past six months and the fuel(s) or non-waste materials the unit will commence combusting;

9.9.a.4.D. The date on which the owner or operator became subject to the currently applicable emission limits;

9.9.a.4.E. The date upon which the owner or operator will cease combusting solid waste and the date (if different) that the owner or operator intends for any new requirements to become applicable (i.e., the effective date of the waste-to-fuel switch), consistent with paragraphs 9.9.a.2 and 9.9.a.3.

9.9.a.5. The owner or operator shall install all air pollution control equipment necessary for compliance with any newly applicable emissions limits which apply as a result of the cessation or commencement or recommencement of combusting solid waste, and the same shall be operational as of the effective date of the waste-to-fuel or fuel-to-waste switch.

9.9.a.6. The owner or operator shall install all monitoring systems necessary for compliance with any newly applicable monitoring requirements which apply as a result of the cessation or commencement or recommencement of combusting solid waste, and the same shall be operational as of the effective date of the waste-to-fuel or fuel-to-waste switch. The owner or operator shall perform all calibration and drift checks as of the effective date of the waste-to-fuel or fuel-to-waste switch. The owner or operator shall perform relative accuracy tests as of the performance test deadline for PM CEMS (if PM CEMS are elected to demonstrate continuous compliance with the particulate matter emission limits). The owner or operator need not repeat relative accuracy testing for other CEMS if the owner or operator previously performed that testing consistent with § 112 CAA monitoring requirements or monitoring requirements under section 9.

9.9.b. The owner or operator shall conduct an annual performance test for the pollutants listed in Table 45-18F or Tables 45-18J through 45-18M and opacity for each CISWI unit as required under subsection 9.7. The owner or operator shall conduct the annual performance test using the test methods listed in Table 45-18F or Tables 45-18J through 45-18M and the procedures in subsection 9.7. The owner or operator shall measure opacity using EPA Reference Method 9 at 40 CFR Part 60. If the owner or operator uses CEMS or continuous opacity monitoring systems to determine compliance, the owner or operator is not required to perform annual performance tests.

9.9.c. The owner or operator shall continuously monitor the operating parameters specified in subdivision 9.6.c through paragraph 9.6.k.5 or established under subdivisions 9.6.l and 9.6.m and as specified in subdivision 9.10.s. Operation above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Three-hour block average values are used to determine compliance (except for baghouse leak detection system alarms) unless a different averaging period is established under subdivisions 9.6.l and 9.6.m or, for energy recovery units, where the averaging time for each operating parameter is a 30-day rolling average, calculated each hour as the average of the previous 720 operating hours. Operation above the established maximum, below the established minimum, or outside the allowable range of the operating limits specified in subdivision 9.9.a constitutes a deviation from operating limits, except during performance tests conducted to determine compliance with the emission and operating limits or to establish new operating limits. Operating limits are confirmed or reestablished during performance tests.

9.9.d. The owner or operator shall burn only the same types of waste and fuels used to establish subcategory applicability (for ERUs) and operating limits during the performance test.

9.9.e. For energy recovery units, incinerators, and small remote units, the owner or operator shall perform annual visual emissions test for ash handling.

9.9.f. For energy recovery units, the owner or operator shall conduct an annual performance test for opacity using EPA Reference Method 9 at 40 CFR Part 60 and 45CSR16 (except where particulate matter continuous monitoring system or continuous parameter monitoring systems are used) and the pollutants listed in Table 45-18K.

9.9.g. For facilities using a CEMS to demonstrate compliance with the carbon monoxide emission limit, the owner or operator may demonstrate compliance with the carbon monoxide emission limit by using the CEMS according to the following requirements:

9.9.g.1. The owner or operator shall measure emissions according to 40 CFR § 60.13 and 45CSR16 to calculate one-hour arithmetic averages, corrected to seven percent oxygen. CEMS data during startup and shutdown are not corrected to seven percent oxygen and are measured at stack oxygen content. The owner or operator shall demonstrate initial compliance with the carbon monoxide emissions limit using a 30-day rolling average of the one-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown calculated using Equation 19-19 in Section 12.4.1 of EPA Reference Method 19 at 40 CFR Part 60, Appendix A-7 and 45CSR16.

9.9.g.2. The owner or operator shall operate the carbon monoxide continuous emissions monitoring system in accordance with the applicable requirements of Performance Specification 4A of Appendix B of 40 CFR Part 60 and 45CSR16 and the quality assurance procedures of Appendix F of 40 CFR Part 60 and 45CSR16.

9.9.h. Coal and liquid/gas energy recovery units with annual average heat input rates greater than 250 MMBtu/hr may elect to demonstrate continuous compliance with the particulate matter emissions limit using a particulate matter CEMS according to the procedures in subdivision 9.10.n instead of the continuous parameter monitoring system specified in subdivision 9.9.i. Coal and liquid/gas energy recovery units with annual average heat input rates less than 250 MMBtu/hr, incinerators, and small remote incinerators may also elect to demonstrate compliance using a particulate matter CEMS according to the procedures in subdivision 9.10.n instead of particulate matter testing with EPA Method 5 at 40 CFR Part 60, Appendix A-3 and 45CSR16 and, if applicable, the continuous opacity monitoring requirements in subdivision 9.9.i.

9.9.i. For energy recovery units with annual average heat input rates greater than or equal to 10 MMBtu/hr but less than 250 MMBtu/hr the owner or operator shall install, operate, certify, and maintain a continuous opacity monitoring system (COMS) according to the procedures in subdivisions 9.10.a through 9.10.r.

9.9.j. For waste-burning kilns, the owner or operator shall conduct an annual performance test for the pollutants (except mercury and particulate matter, and hydrogen chloride if no acid gas wet scrubber is used) listed in Table 45-18L. If the waste-burning kiln is not equipped with a wet scrubber or dry scrubber, the owner or operator shall determine compliance with the hydrogen chloride emission limit using a CEMS as specified in paragraph 9.9.j.1. The owner or operator shall determine compliance with the mercury emissions limit using a mercury CEMS according to paragraph 9.9.j.2. The owner or operator shall determine compliance with particulate matter using CPMS according to the following requirements:

9.9.j.1. If the owner or operator monitors compliance with the hydrogen chloride (HCl) emissions limit by operating an HCl CEMS, the owner or operator shall do so in accordance with Performance Specification 15 (PS 15) of Appendix B to 40 CFR Part 60, or PS 18 of Appendix B to 40 CFR Part 60. The owner or operator shall operate, maintain, and quality assure a HCl CEMS installed and certified under PS 15 according to the quality assurance requirements in Procedure 1 of Appendix F to 40 CFR Part 60, except that the owner or operator shall replace the relative accuracy test audit requirements of Procedure 1 with the validation requirements and criteria of Sections 11.1.1 and 12.0 of PS 15. The owner or operator shall operate, maintain, and quality assure a HCl CEMS installed and certified under PS 18 according to the quality assurance requirements in Procedure 6 of Appendix F to 40

CFR Part 60. For any performance specification used, the owner or operator shall use Method 321 of Appendix A to 40 CFR Part 63 as the reference test method for conducting relative accuracy testing. The span value and calibration requirements in subparagraphs 9.9.j.1.A and 9.9.j.1.B apply to all HCl CEMS used under this subpart:

9.9.j.1.A. The owner or operator shall use a measurement span value for any HCl CEMS of 0–10 ppmvw unless the monitor is installed on a kiln without an inline raw mill. For kilns without an inline raw mill, the owner or operator may use a higher span value sufficient to quantify all expected emissions concentrations. The HCl CEMS data recorder output range shall include the full range of expected HCl concentration values, which would include those expected during "mill off" conditions. The owner or operator shall document corresponding data recorder range in the site-specific monitoring plan and associated records;

9.9.j.1.B. In order to quality assure data measured above the span value, the owner or operator shall use one of the three options in parts 9.9.j.1.B.1 through 9.9.j.1.B.3 below:

9.9.j.1.B.1 Include a second span that encompasses the HCl emission concentrations expected to be encountered during "mill off" conditions. This second span may be rounded to a multiple of 5 ppm of total HCl. The owner or operator shall follow requirements of the appropriate HCl monitor performance specification for this second span, except that a RATA with the mill off is not required;

9.9.j.1.B.2. Quality assure any data above the span value by proving instrument linearity beyond the span value established in subparagraph 9.9.j.1.A using the following procedure: conduct a weekly "above span linearity" calibration challenge of the monitoring system using a reference gas with a certified value greater than the highest expected hourly concentration or greater than 75% of the highest measured hourly concentration. The "above span" reference gas shall meet the requirements of the applicable performance specification and shall be introduced to the measurement system at the probe. The owner or operator shall record and report the results of this procedure as it would for a daily calibration. The "above span linearity" challenge is successful if the value measured by the HCl CEMS falls within ten percent of the certified value of the reference gas. If the value measured by the HCl CEMS during the above span linearity challenge exceeds ten percent of the certified value of the reference gas, the owner or operator shall evaluate and repair the monitoring system and meet a new "above span linearity" challenge before returning the HCl CEMS to service, or data above span from the HCl CEMS shall be subject to the quality assurance procedures established in 9.9.j.1.B.4. In this manner, the owner or operator shall normalize values measured by the HCl CEMS in this manner during the above span linearity challenge exceeding plus or minus 20% of the certified value of the reference gas using Equation 6;

9.9.j.1.B.3. Quality assure any data above the span value established in subparagraph 9.9.j.1.A using the following procedure: any time two consecutive one-hour average measured concentration of HCl exceeds the span value the owner or operator shall, within 24 hours before or after, introduce a higher, "above span" HCl reference gas standard to the HCl CEMS. The "above span" reference gas shall meet the requirements of the applicable performance specification and target a concentration level between 50% and 150% of the highest expected hourly concentration measured during the period of measurements above span, and shall be introduced at the probe. While this target represents a desired concentration range that is not always achievable in practice, the owner or operator shall demonstrate its intent to meet this range by the value of the reference gas. Expected values may include above span calibrations done before or after the above-span measurement period. The owner or operator shall record and report the results of this procedure as it would for a daily calibration. The "above span" calibration is successful if the value measured by the HCl CEMS is within 20% of the certified value of the reference gas. If the value measured by the HCl CEMS is not within 20% of the certified value of the reference gas, then the owner or operator shall normalize the stack gas values measured above span as described in part 9.9.j.1.B.4. If the "above span" calibration is conducted during the period when measured emissions are above span and the owner or operator fails to collect the one data point in an hour due to the calibration duration, then the owner or operator shall determine the emissions

average for that missed hour as the average of hourly averages for the hour preceding the missed hour and the hour following the missed hour. In an hour where an owner or operator is conducting an "above span" calibration and collects one or more data points, the emissions average is represented by the average of all valid data points collected in that hour;

9.9.j.1.B.4. In the event that the "above span" calibration is not successful (i.e., the HCl CEMS measured value is not within 20% of the certified value of the reference gas), then the owner or operator shall normalize the one-hour average stack gas values measured above the span during the 24-hour period preceding or following the "above span" calibration for reporting based on the HCl CEMS response to the reference gas as shown in Equation 6. Only one "above span" calibration is needed per 24-hour period.

$$\frac{Certified\ reference\ gas\ value}{Measured\ value\ of\ reference\ gas} = Measured\ stack\ gas\ result = Normalized\ stack\ gas\ result \quad Equation\ 6$$

9.9.j.2. The owner or operator shall determine compliance with the mercury emissions limit using a mercury CEMS according to the following requirements:

9.9.j.2.A. The owner or operator shall operate a CEMS system in accordance with performance specification 12A of 40 CFR Part 60, Appendix B or a sorbent trap based integrated monitor in accordance with performance specification 12B of 40 CFR Part 60, Appendix B. The duration of the performance test shall be a calendar month. For each calendar month in which the waste-burning kiln operates, the owner or operator shall obtain hourly mercury concentration data and stack gas volumetric flow rate data. The owner or operator shall demonstrate compliance with the mercury emissions limit using a 30-day rolling average of these one-hour mercury concentrations, including CEMS data during startup and shutdown calculated using equation 19–19 in section 12.4.1 of Method 19 of 40 CFR Part 60, Appendix A–7. CEMS data during startup and shutdown are not corrected to seven percent oxygen and are measured at stack oxygen content;

9.9.j.2.B. Owners or operators using a mercury CEMS shall install, operate, calibrate, and maintain an instrument for continuously measuring and recording the mercury mass emissions rate to the atmosphere according to the requirements of performance specifications 6 and 12A of 40 CFR Part 60, Appendix B, and quality assurance procedure 6 of 40 CFR Part 60, Appendix F; and

9.9.j.2.C. The owner or operator of a waste-burning kiln shall demonstrate initial compliance by operating a mercury CEMS while the raw mill of the in-line kiln/raw mill is operating under normal conditions and including at least one period when the raw mill is off.

9.9.k. If the owner or operator uses an air pollution control device to meet the emission limitations in section 9, the owner or operator shall conduct an initial and annual inspection of the air pollution control device. The inspection shall include, at a minimum, the following:

9.9.k.1. Inspect air pollution control device(s) for proper operation; and

9.9.k.2. Develop a site-specific monitoring plan according to the requirements in subdivision 9.9.l. This requirement also applies to the owner or operator if the owner or operator petitions the Administrator for alternative monitoring parameters under 40 CFR § 60.13(i).

9.9.l. For each CMS required in this section, the owner or operator shall develop and submit to the Secretary for approval a site-specific monitoring plan according to the requirements of this subdivision that addresses subparagraphs 9.9.l.1.A through 9.9.l.1.F below.

9.9.l.1. The owner or operator shall submit this site-specific monitoring plan at least 60 days before the initial performance evaluation of the continuous monitoring system.

9.9.1.1.A. Installation of the continuous monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device);

9.9.1.1.B. Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer and the data collection and reduction systems;

9.9.1.1.C. Performance evaluation procedures and acceptance criteria (e.g., calibrations);

9.9.1.1.D. Ongoing operation and maintenance procedures in accordance with the general requirements of 40 CFR § 60.11(d);

9.9.1.1.E. Ongoing data quality assurance procedures in accordance with the general requirements of 40 CFR § 60.13; and

9.9.1.1.F. Ongoing recordkeeping and reporting procedures in accordance with the general requirements of 40 CFR §§ 60.7(b), (c), (c)(1), (c)(4), (d), (e), (f), and (g).

9.9.1.2. The owner or operator shall conduct a performance evaluation of each continuous monitoring system in accordance with the site-specific monitoring plan.

9.9.1.3. The owner or operator shall operate and maintain the continuous monitoring system in continuous operation according to the site-specific monitoring plan.

9.9.m. The owner or operator has an operating limit that requires the use of a flow monitoring system, the owner or operator shall meet the requirements in subdivision 9.9.1 and paragraphs 9.9.m.1 through 9.9.m.4 below:

9.9.m.1. Install the flow sensor and other necessary equipment in a position that provides a representative flow;

9.9.m.2. Use a flow sensor with a measurement sensitivity at full scale of no greater than two percent;

9.9.m.3. Minimize the effects of swirling flow or abnormal velocity distributions due to upstream and downstream disturbances; and

9.9.m.4. Conduct a flow monitoring system performance evaluation in accordance with the monitoring plan at the time of each performance test, but no less frequently than annually.

9.9.n. If the owner or operator has an operating limit that requires the use of a pressure monitoring system, the owner or operator shall meet the requirements in subdivision 9.9.1 and paragraphs 9.9.n.1 through 9.9.n.6 below:

9.9.n.1. Install the pressure sensor(s) in a position that provides a representative measurement of the pressure (e.g., PM scrubber pressure drop);

9.9.n.2. Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion;

9.9.n.3. Use a pressure sensor with a minimum tolerance of 1.27 centimeters of water or a minimum tolerance of one percent of the pressure monitoring system operating range, whichever is less;

9.9.n.4. Perform checks at the frequency outlined in the site-specific monitoring plan to ensure pressure measurements are not obstructed (e.g., check for pressure tap pluggage daily);

9.9.n.5. Conduct a performance evaluation of the pressure monitoring system in accordance with the monitoring plan at the time of each performance test, but no less frequently than annually and

9.9.n.6. If at any time the measured pressure exceeds the manufacturer's specified maximum operating pressure range, conduct a performance evaluation of the pressure monitoring system in accordance with the monitoring plan and confirm that the pressure monitoring system continues to meet the performance requirements in the monitoring plan. Alternatively, install and verify the operation of a new pressure sensor.

9.9.o. If the owner or operator has an operating limit that requires a pH monitoring system, the owner or operator shall meet the requirements in paragraphs 9.9.o.1 through 9.9.o.4 below:

9.9.o.1. Install the pH sensor in a position that provides a representative measurement of scrubber effluent pH;

9.9.o.2. Ensure the sample is properly mixed and representative of the fluid to be measured;

9.9.o.3. Conduct a performance evaluation of the pH monitoring system in accordance with the monitoring plan at least once each process operating day; and

9.9.o.4. Conduct a performance evaluation (including a two-point calibration with one of the two buffer solutions having a pH within 1 of the pH of the operating limit) of the pH monitoring system in accordance with the monitoring plan at the time of each performance test, but no less frequently than quarterly.

9.9.p. If the owner or operator has an operating limit that requires a secondary electric power monitoring system for an electrostatic precipitator, the owner or operator shall meet the requirements in subdivision 9.9.l and paragraphs 9.9.p.1 and 9.9.p.2 below:

9.9.p.1. Install sensors to measure (secondary) voltage and current to the precipitator collection plates; and

9.9.p.2. Conduct a performance evaluation of the electric power monitoring system in accordance with the monitoring plan at the time of each performance test, but no less frequently than annually.

9.9.q. If the owner or operator has an operating limit that requires the use of a monitoring system to measure sorbent injection rate (e.g., weigh belt, weigh hopper or hopper flow measurement device), the owner or operator shall meet the requirements in subdivision 9.9.l and paragraphs 9.9.q.1 through 9.9.q.2 below:

9.9.q.1. Install the system in a position(s) that provides a representative measurement of the total sorbent injection rate; and

9.9.q.2. Conduct a performance evaluation of the sorbent injection rate monitoring system in accordance with the monitoring plan at the time of each performance test, but no less frequently than annually.

9.9.r. If the owner or operator elects to use a fabric filter bag leak detection system to comply with the requirements of section 9, the owner or operator shall install, calibrate, maintain, and continuously operate a bag leak detection system as specified in subdivision 9.9.l and paragraphs 9.9.r.1 through 9.9.r.5 below:

9.9.r.1. Install a bag leak detection sensor(s) in a position(s) that will be representative of the

relative or absolute particulate matter loadings for each exhaust stack, roof vent or compartment (e.g., for a positive pressure fabric filter) of the fabric filter;

9.9.r.2. Use a bag leak detection system certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of ten milligrams per actual cubic meter or less;

9.9.r.3. Conduct a performance evaluation of the bag leak detection system in accordance with the monitoring plan and consistent with the guidance provided in EPA-454/R-98-015 (refer to 40 CFR § 60.17);

9.9.r.4. Use a bag leak detection system equipped with a device to continuously record the output signal from the sensor; and

9.9.r.5. Use a bag leak detection system equipped with a system that will sound an alarm when it detects an increase in relative particulate matter emissions over a preset level. The alarm shall be located where it is observed readily by plant operating personnel.

9.9.s. For facilities using a CEMS to demonstrate compliance with the sulfur dioxide emission limit, the owner or operator may demonstrate compliance with the sulfur dioxide emission limit by using the CEMS specified in subdivisions 9.10.a through 9.10.r to measure sulfur dioxide. CEMS data during startup and shutdown, as defined in 40 CFR § 60.2265, are not corrected to seven percent oxygen, and are measured at stack oxygen content. The owner or operator shall calculate a 30-day rolling average of the one-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown as defined in 40 CFR § 60.2265, using Equation 19-19 in Section 12.4.1 of EPA Reference Method 19 at 40 CFR Part 60, Appendix A-7. The owner or operator shall operate the sulfur dioxide CEMS according to Performance Specification 2 in Appendix B of 40 CFR Part 60 and shall follow the procedures and methods specified in this subdivision. For sources that have actual inlet emissions less than 100 parts per million dry volume, the relative accuracy criterion for inlet sulfur dioxide CEMS should be no greater than 20% of the mean value of the reference method test data in terms of the units of the emission standard, or five parts per million dry volume absolute value of the mean difference between the reference method and the CEMS, whichever is greater.

9.9.s.1. During each relative accuracy test run of the CEMS required by Performance Specification 2 in Appendix B of 40 CFR Part 60, the owner or operator shall collect sulfur dioxide and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the CEMS and the test methods specified below:

9.9.s.1.A. For sulfur dioxide, EPA Reference Method 6 or 6C, or as an alternative ANSI/ASME PTC 19.10-1981 (incorporated by reference, see 40 CFR § 60.17); and

9.9.s.1.B. For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B at 40 CFR Part 60, Appendix A-2, or as an alternative ANSI/ASME PTC 19.10-1981 (incorporated by reference, see 40 CFR § 60.17), as applicable.

9.9.s.2. The span value of the CEMS at the inlet to the sulfur dioxide control device shall be 125% of the maximum estimated hourly potential sulfur dioxide emissions of the unit. The span value of the CEMS at the outlet of the sulfur dioxide control device shall be 50% of the maximum estimated hourly potential sulfur dioxide emissions of the unit.

9.9.s.3. The owner or operator shall conduct accuracy determinations quarterly and calibration drift tests daily in accordance with Procedure 1 in Appendix F of 40 CFR Part 60.

9.9.t. For facilities using a CEMS to demonstrate continuous compliance with the nitrogen oxides emission limit, the owner or operator may demonstrate compliance with the nitrogen oxides emission limit by using the CEMS specified in subdivisions 9.10.a through 9.10.r to measure nitrogen

oxides. CEMS data during startup and shutdown, as defined in 40 CFR § 60.2265, are not corrected to seven percent oxygen, and are measured at stack oxygen content. The owner or operator shall calculate a 30-day rolling average of the one-hour arithmetic average emission concentrations using Equation 19-19 in Section 12.4.1 of EPA Reference Method 19 at 40 CFR Part 60, Appendix A-7. The owner or operator shall operate the nitrogen oxides CEMS according to Performance Specification 2 in Appendix B of 40 CFR Part 60 and shall follow the procedures and methods specified in paragraphs 9.9.t.1 through 9.9.t.4 below:

9.9.t.1. During each relative accuracy test run of the CEMS required by Performance Specification 2 of Appendix B of 40 CFR Part 60, the owner or operator shall collect nitrogen oxides and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) with both the CEMS and the test methods specified in subparagraphs 9.9.t.1.A and 9.9.t.1.B below:

9.9.t.1.A. For nitrogen oxides, EPA Reference Method 7 or 7E of 40 CFR Part 60, Appendix A-4; and

9.9.t.1.B. For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B at 40 CFR Part 60, Appendix A-2, or as an alternative ANSI/ASME PTC 19.10-1981 (refer to 40 CFR § 60.17), as applicable;

9.9.t.2. The span value of the CEMS shall be 125% of the maximum estimated hourly potential nitrogen oxide emissions of unit;

9.9.t.3. Conduct accuracy determinations quarterly and calibration drift tests daily in accordance with Procedure 1 in Appendix F of 40 CFR Part 60; and

9.9.t.4. The owner or operator of an affected facility may request that it determine compliance with the nitrogen oxides emission limit using carbon dioxide measurements corrected to an equivalent of seven percent oxygen. If the owner or operator selects carbon dioxide for use in diluent corrections, the owner or operator shall establish the relationship between oxygen and carbon dioxide levels during the initial performance test according to the procedures and methods specified in subparagraphs 9.9.t.4.A through 9.9.t.4.C below. The owner or operator may reestablish this relationship during performance compliance tests. The owner or operator shall:

9.9.t.4.A. Use the fuel factor equation in Method 3B to determine the relationship between oxygen and carbon dioxide at a sampling location, and use Method 3A, 3B or, as an alternative, ANSI/ASME PTC 19.10-1981 (refer to 40 CFR § 60.17), as applicable, to determine the oxygen concentration at the same location as the carbon dioxide monitor;

9.9.t.4.B. Take samples for at least 30 minutes in each hour. Each sample shall represent a one-hour average;

9.9.t.4.C. Perform a minimum of three runs.

9.9.u. For facilities using a CEMS to demonstrate continuous compliance with any of the emission limits of section 9, the owner or operator shall complete the following:

9.9.u.1. Demonstrate compliance with the appropriate emission limit(s) using a 30-day rolling average of one-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown, as defined in 40 CFR § 60.2265, calculated using Equation 19-19 in Section 12.4.1 of EPA Reference Method 19 at 40 CFR Part 60, Appendix A-7. CEMS data during startup and shutdown, as defined in 40 CFR § 60.2265, are not corrected to seven percent oxygen and are measured at stack oxygen content; and

9.9.u.2. Operate all CEMS in accordance with the applicable procedures under Appendices B

and F of 40 CFR Part 60.

9.9.v. Use of the bypass stack at any time is an emissions standards deviation for particulate matter, HCl, Pb, Cd, Hg, $NO_X$, $SO_2$, and dioxin/furans.

9.9.w. For energy recovery units with a design heat input capacity of 100 MMBtu/hr or greater that do not use a carbon monoxide CEMS, the owner or operator shall install, operate, and maintain an oxygen analyzer system as defined in 40 CFR § 60.2265 according to the procedures in paragraphs 9.9.w.1 through 9.9.w.4 below:

9.9.w.1. Install the oxygen analyzer system by the initial performance test date as specified in subdivision 9.6.c through paragraph 9.6.k.5;

9.9.w.2. Operate the oxygen trim system in compliance with paragraph 9.9.w.3 at all times;

9.9.w.3. Maintain the oxygen level such that the 30-day rolling average that is established as the operating limit for oxygen is not below the lowest hourly average oxygen concentration measured during the most recent (carbon monoxide) CO performance test; and

9.9.w.4. Calculate and record a 30-day rolling average oxygen concentration using Equation 19-19 in Section 12.4.1 of EPA Reference Method 19 of Appendix A7 of 40 CFR Part 60.

9.9.x. For energy recovery units with annual average heat input rates greater than or equal to 250 MMBtu/hour and waste-burning kilns, the owner or operator shall install, calibrate, maintain, and operate a PM CPMS and record the output of the system as specified in paragraphs 9.9.x.1 through 9.9.x.8 below. For other energy recovery units, the owner or operator may elect to use PM CPMS operated in accordance with this section. PM CPMS are suitable in lieu of using other CMS for monitoring PM compliance (e.g., bag leak detectors, ESP secondary power, PM scrubber pressure). As stated above, the owner shall:

9.9.x.1. Install, calibrate, operate, and maintain the PM CPMS according to the procedures in approved site-specific monitoring plan developed in accordance with subdivision 9.9.l and subparagraphs 9.9.x.1.A through 9.9.x.1.C;

9.9.x.1.A. The owner or operator shall base the operating principle of the PM CPMS on in-stack or extractive light scatter, light scintillation, beta attenuation or mass accumulation of the exhaust gas or representative sample. The owner or operator shall express the reportable measurement output from the PM CPMS as milliamps;

9.9.x.1.B. The PM CPMS shall have a cycle time (i.e., period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes; and

9.9.x.1.C. The PM CPMS shall be capable of detecting and responding to particulate matter concentrations increments no greater than 0.5 mg/actual cubic meter.

9.9.x.2. During the initial performance test or any subsequent performance test that demonstrates compliance with the PM limit, adjust the site-specific operating limit in accordance with the results of the performance test according to the procedures specified in subdivision 9.6.c through paragraph 9.6.k.5 of this rule;

9.9.x.3. Collect PM CPMS hourly average output data for all energy recovery unit or waste-burning kiln operating hours and express the PM CPMS output as millamps;

9.9.x.4. Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit or waste-burning kiln operating hours data (milliamps);

9.9.x.5. Collect data using the PM CPMS at all times the energy recovery unit or waste-burning kiln is operating and at the intervals specified in subparagraph 9.9.x.1.B, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance as defined in the site-specific monitoring plan;

9.9.x.6. Use all the data collected during all energy recovery unit or waste-burning kiln operating hours in assessing compliance with the operating limit except:

9.9.x.6.A. Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions or required monitoring system quality assurance or quality control activities conducted during monitoring system malfunctions (report any such periods in the annual deviation report); or

9.9.x.6.B. Any data collected during periods when the monitoring system is out of control as specified in the site-specific monitoring plan, repairs associated with periods when the monitoring system is out of control or required monitoring system quality assurance or quality control activities conducted during out-of-control periods (report emissions or operating levels and report any such periods in the annual deviation report); or

9.9.x.6.C. Any PM CPMS data recorded during periods of CEMS data during startup and shutdown, as defined in 40 CFR § 60.2265.

9.9.x.7. Record and make available upon request results of PM CPMS system performance audits, as well as the dates and duration of periods from when the PM CPMS is out of control until completion of the corrective actions necessary to return the PM CPMS to operation consistent with the site-specific monitoring plan; and

9.9.x.8. For any deviation of the 30-day rolling average PM CPMS average value from the established operating parameter limit:

9.9.x.8.A. Within 48 hours of the deviation, visually inspect the air pollution control device;

9.9.x.8.B. If inspection of the air pollution control device identifies the cause of the deviation, take corrective action as soon as possible and return the PM CPMS measurement to within the established value; and

9.9.x.8.C. Within 30 days of the deviation or at the time of the annual compliance test, whichever comes first, conduct a PM emissions compliance test to determine compliance with the PM emissions limit and to verify the operation of the emission control device. Within 45 days of the deviation, the owner or operator shall re-establish the CPMS operating limit. The owner or operator is not required to conduct additional testing for any deviations that occur between the time of the original deviation and the PM emissions compliance test required under this subparagraph.

9.9.x.8.D. PM CPMS deviations leading to more than four required performance tests in a 12-month process operating period (rolling monthly) constitute a violation of section 9.

9.9.y. When there is an alkali bypass or an in-line coal mill that exhausts emissions through a separate stack(s), the combined emissions are subject to the emission limits applicable to waste-burning kilns. To determine the kiln-specific emission limit for demonstrating compliance, the owner or operator shall:

9.9.y.1. (1) Calculate a kiln-specific emission limit using Equation 7:

$$C_{ks} = \frac{\left((Emission\ limit\ x\ (Q_{ab} + Q_{cm} + Q_{ks})) - (Q_{ab}\ x\ C_{ab}) - (Q_{cm}\ x\ C_{cm})\right)}{Q_{ks}} \quad Equation\ 7$$

$C_{ks}$ = Kiln stack concentration (ppmvd, mg dscm, ng/dscm, depending on pollutant. Each corrected to 7% O2.)
$Q_{ab}$ = Alkali bypass flow rate (volume/hr)
$C_{ab}$ = Alkali bypass concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O2.)
$Q_{cm}$ = In-line coal mill flow rate (volume/hr)
$C_{cm}$ = In-line coal mill concentration (ppmvd, mg/dscm, ng/dscm, depending on pollutant. Each corrected to 7% O2.)
$Q_{ks}$ = Kiln stack flow rate (volume/hr)

9.9.y.2. Measure particulate matter concentration downstream of the in-line coal mill and measure all other pollutant concentrations either upstream or downstream of the in-line coal mill; and

9.9.y.3. For purposes of determining the combined emissions from kilns equipped with an alkali bypass or that exhaust kiln gases to a coal mill that exhausts through a separate stack, instead of installing a CEMS or PM CPMS on the alkali bypass stack or inline coal mill stack, the owner or operator may use the results of the initial and subsequent performance test to demonstrate compliance with the relevant emissions limit. The owner or operator shall conduct a performance test on an annual basis (between 11 and 13 calendar months following the previous performance test).

9.9.z. Timing of performance tests and control device inspections. – The owner or operator shall:

9.9.z.1. Conduct annual performance tests between 11 and 13 months of the previous performance test;

9.9.z.2. Conduct the air pollution control device inspections on an annual basis (but no more than 12 months following the previous annual air pollution control device inspection) and complete the air pollution control device inspection as described in subdivisions 9.8.e and 9.8.f above;

9.9.z.3. Conduct annual performance tests according to the schedule specified in subdivision 9.9.x, with the following exceptions:

9.9.z.3.A. The owner or operator may conduct a repeat performance test at any time to establish new values for the operating limits to apply from that point forward, as specified in subdivision 9.9.aa. The Secretary may request a repeat performance test at any time;

9.9.z.3.B. The owner or operator shall repeat the performance test within 60 days of a process change;

9.9.z.3.C. If the initial or any subsequent performance test for any pollutant in Table 45-18F or Tables 45-18J through 45-18M, as applicable, demonstrates that the emission level for the pollutant is no greater than the emission level specified in parts 9.9.z.3.C.1 or 9.9.z.3.C.2, as applicable, and the owner or operator is not required to conduct a performance test for the pollutant in response to a request by the Secretary in subparagraph 9.9.z.3.A or a process change in subparagraph 9.9.z.3.B, the owner or operator may elect to skip conducting a performance test for the pollutant for the next two years. The owner or operator shall conduct a performance test for the pollutant during the third year and no more than 37 months following the previous performance test for the pollutant. For cadmium and lead, the owner or operator shall emit both cadmium and lead at emission levels no greater than the respective

emission levels specified in part 9.9.z.3.C.1 in order to qualify for less frequent testing under paragraph 9.9.z.3.

9.9.z.3.C.1. For particulate matter, hydrogen chloride, mercury, carbon monoxide, nitrogen oxides, sulfur dioxide, cadmium, lead, and dioxins/furans, the emission level equal to 75% of the applicable emission limit in Table 45-18F or Tables 45-18J through 45-18M, as applicable.

9.9.z.3.C.2. For fugitive emissions, visible emissions (of combustion ash from the ash conveying system) for two percent of the time during each of the three one-hour observation periods.

9.9.z.3.D. If the owner or operator is conducting less frequent testing for a pollutant as provided in subparagraph 9.9.z.3.C, and a subsequent performance test for the pollutant indicates that the CISWI unit does not meet the emission level specified in parts 9.9.z.3.C.1 or 9.9.z.3.C.2, as applicable, the owner or operator shall conduct annual performance tests for the pollutant according to the schedule specified in paragraph 9.9.z.3 until the facility qualifies for less frequent testing for the pollutant as specified in subparagraph 9.9.z.3.C.

9.9.aa. Repeat performance test to establish new operating limits.

9.9.aa.1. The owner or operator may conduct a repeat performance test at any time to establish new values for the operating limits. The Secretary may request a repeat performance test at any time.

9.9.aa.2. The owner or operator shall repeat the performance test if the feed stream is different than the feed streams used during any performance test used to demonstrate compliance.

9.10. Monitoring equipment and parameters.

9.10.a. If the owner or operator is using a wet scrubber to comply with the emission limitation under subdivisions 9.6.a. and 9.6.b, the owner or operator shall install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 45-18G. These devices (or methods) shall measure and record the values for these operating parameters at the frequencies indicated in Table 45-18G at all times, except as specified in paragraph 9.10.s.1.

9.10.b. If the owner or operator uses a fabric filter to comply with the requirements of section 9, the owner or operator shall install, calibrate, maintain, and continuously operate a bag leak detection system as specified in paragraphs 9.10.b.1 through 9.10.b.8 below:

9.10.b.1. Install and operate a bag leak detection system for each exhaust stack of the fabric filter;

9.10.b.2. Each bag leak detection system shall be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations;

9.10.b.3. The bag leak detection system shall be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of ten milligrams per actual cubic meter or less;

9.10.b.4. The bag leak detection system sensor shall provide output of relative or absolute particulate matter loadings;

9.10.b.5. The bag leak detection system shall be equipped with a device to continuously record the output signal from the sensor;

9.10.b.6. The bag leak detection system shall be equipped with an alarm system that will alert automatically when it detects an increase in relative particulate matter emission over a preset level. The alarm shall be located where it is observed easily by plant operating personnel;

9.10.b.7. For positive pressure fabric filter systems, a bag leak detection system shall be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector shall be installed downstream of the fabric filter; and

9.10.b.8. Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

9.10.c. If the owner or operator is using something other than a wet scrubber, activated carbon, selective non-catalytic reduction, an electrostatic precipitator or a dry scrubber to comply with the emission limitations under subdivisions 9.6.a. and 9.6.b, the owner or operator shall install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in subdivisions 9.6.l through 9.6.m.

9.10.d. If the owner or operator uses activated carbon injection to comply with the emission limitations in section 9, the owner or operator shall measure the minimum sorbent flow rate once per hour.

9.10.e. If the owner or operator uses selective noncatalytic reduction to comply with the emission limitations, the owner or operator shall complete the following:

9.10.e.1. Following the date on which the initial performance test is completed or is required to be completed under subsection 9.7 through paragraph 9.7.j.3, whichever date comes first, ensure that the affected facility does not operate above the maximum charge rate or below the minimum secondary chamber temperature (if applicable to the CISWI unit) or the minimum reagent flow rate measured as three-hour block averages at all times.

9.10.e.2. Operation of the affected facility above the maximum charge rate, below the minimum secondary chamber temperature and below the minimum reagent flow rate simultaneously constitute a violation of the nitrogen oxides emissions limit.

9.10.f. If the owner or operator uses an electrostatic precipitator to comply with the emission limits of section 9, the owner or operator shall monitor the secondary power to the electrostatic precipitator collection plates and maintain the three-hour block averages at or above the operating limits established during the mercury or particulate matter performance test.

9.10.g. For waste-burning kilns not equipped with a wet scrubber or dry scrubber, in place of hydrogen chloride testing with EPA Method 321 at 40 CFR Part 63, Appendix A, an owner or operator shall install, calibrate, maintain, and operate a CEMS for monitoring hydrogen chloride emissions discharged to the atmosphere and record the output of the system. To demonstrate continuous compliance with the hydrogen chloride emissions limit for units other than waste-burning kilns not equipped with a wet scrubber or dry scrubber, a facility may substitute use of a hydrogen chloride CEMS for conducting the hydrogen chloride annual performance test, monitoring the minimum hydrogen chloride sorbent flow rate and monitoring the minimum scrubber liquor pH.

9.10.h. To demonstrate continuous compliance with the particulate matter emissions limit, a facility may substitute use of a particulate matter CEMS for conducting the particulate matter annual performance test and other CMS monitoring for PM compliance (e.g., bag leak detectors, ESP secondary power, PM scrubber pressure).

9.10.i. To demonstrate continuous compliance with the dioxin/furan emissions limit, a facility

may substitute use of a continuous automated sampling system for the dioxin/furan annual performance test. The owner or operator shall record the output of the system and analyze the sample according to EPA Method 23 at 40 CFR Part 60, Appendix A-7. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to dioxin/furan from continuous monitors is published in the Federal Register. The owner or operator who elects to continuously sample dioxin/furan emissions instead of sampling and testing using EPA Method 23 at 40 CFR Part 60, Appendix A-7, shall install, calibrate, maintain, and operate a continuous automated sampling system and shall comply with the requirements specified in 40 CFR §§ 60.58b(p) and (q). A facility may substitute continuous dioxin/furan monitoring for the minimum sorbent flow rate, if activated carbon sorbent injection is used solely for compliance with the dioxin/furan emission limit.

9.10.j. To demonstrate continuous compliance with the mercury emissions limit, a facility may substitute use of a continuous automated sampling system for the mercury annual performance test. The owner or operator shall record the output of the system and analyze the sample at set intervals using any suitable determinative technique that can meet Performance Specification 12B criteria. This option to use a continuous automated sampling system takes effect on the date a final performance specification applicable to mercury from monitors is published in the Federal Register. The owner or operator who elects to continuously sample mercury emissions instead of sampling and testing using EPA Method 29 or 30B at 40 CFR Part 60, Appendix A-8, ASTM D6784-02 (Reapproved 2008) (incorporated by reference, see 40 CFR § 60.17), or an approved alternative method for measuring mercury emissions, shall install, calibrate, maintain, and operate a continuous automated sampling system and shall comply with the requirements specified in 40 CFR §§ 60.58b(p) and (q). A facility may substitute continuous mercury monitoring for the minimum sorbent flow rate, if activated carbon sorbent injection is used solely for compliance with the mercury emission limit.

9.10.k. To demonstrate continuous compliance with the nitrogen oxides emissions limit, a facility may substitute use of a CEMS for the nitrogen oxides annual performance test to demonstrate compliance with the nitrogen oxides emissions limits.

9.10.k.1. Install, calibrate, maintain, and operate a CEMS for measuring nitrogen oxides emissions discharged to the atmosphere and record the output of the system. The owner or operator shall follow the requirements under Performance Specification 2 of Appendix B of 40 CFR Part 60, the Quality Assurance Procedure 1 of Appendix F of 40 CFR Part 60, and the procedures under 40 CFR § 60.13 for installation, evaluation, and operation of the CEMS.

9.10.k.2. Following the date that the initial performance test for nitrogen oxides is completed or is required to be completed under subsection 9.7 through paragraph 9.7.j.3, the owner or operator shall determine compliance with the emission limit for nitrogen oxides required under 40 CFR § 60.52b(d) based on the 30-day rolling average of the hourly emission concentrations using CEMS outlet data. The owner or operator shall express the one-hour arithmetic averages in parts per million by volume corrected to seven percent oxygen (dry basis) and used to calculate the 30-day rolling average concentrations. CEMS data during startup and shutdown are not corrected to seven percent oxygen and are measured at stack oxygen content. The owner or operator shall calculate the one-hour arithmetic averages using the data points required under 40 CFR § 60.13(e)(2).

9.10.l. To demonstrate continuous compliance with the sulfur dioxide emissions limit, a facility may substitute use of a continuous automated sampling system for the sulfur dioxide annual performance test.

9.10.l.1. The owner or operator shall install, calibrate, maintain, and operate a CEMS for measuring sulfur dioxide emissions discharged to the atmosphere and record the output of the system. The owner or operator shall follow the requirements under Performance Specification 2 of Appendix B of 40 CFR Part 60, the Quality Assurance requirements of Procedure 1 of Appendix F of 40 CFR Part 60, and the procedures under 40 CFR § 60.13 for installation, evaluation, and operation of the CEMS.

9.10.l.2. Following the date that the initial performance test for sulfur dioxide is completed or is required to be completed under subsection 9.7 through paragraph 9.7.j.3, the owner or operator may demonstrate compliance with the sulfur dioxide emission limit based on the 30-day rolling average of the hourly arithmetic average emission concentrations using CEMS outlet data. The owner or operator shall express the one-hour arithmetic averages in parts per million corrected to seven percent oxygen (dry basis) and used to calculate the 30-day rolling average emission concentrations. CEMS data during startup and shutdown are not corrected to seven percent oxygen and are measured at stack oxygen content. The owner or operator shall calculate the one-hour arithmetic averages using the data points required under 40 CFR § 60.13(e)(2).

9.10.m. For energy recovery units over 10 MMBtu/hr but less than 250 MMBtu/hr annual average heat input rates that do not use a wet scrubber, fabric filter with bag leak detection system or particulate matter CEMS, the owner or operator shall install, operate, certify, and maintain a continuous opacity monitoring system according to the procedures in paragraphs 9.10.m.1 through 9.10.m.5 by the compliance date specified in subdivisions 9.6.a. and 9.6.b. Energy recovery units that use a particulate matter CEMS to demonstrate initial and continuing compliance according to the procedures in subdivision 9.10.n are not required to install a continuous opacity monitoring system and shall perform the annual performance tests for opacity consistent with subdivision 9.9.f. The owner or operator shall:

9.10.m.1. Install, operate, and maintain each continuous opacity monitoring system according to Performance Specification 1 at 40 CFR Part 60, Appendix B;

9.10.m.2. Conduct a performance evaluation of each continuous opacity monitoring system according to the requirements in 40 CFR § 60.13 and according to Performance Specification 1 at 40 CFR Part 60, Appendix B;

9.10.m.3. As specified in 40 CFR § 60.13(e)(1), for each continuous opacity monitoring system, complete a minimum of one cycle of sampling and analyzing for each successive ten-second period and one cycle of data recording for each successive six-minute period;

9.10.m.4. Reduce the continuous opacity monitoring system data as specified in 40 CFR § 60.13(h)(1); and

9.10.m.5. Determine and record all the six-minute averages (and one-hour block averages as applicable) collected.

9.10.n. For coal and liquid/gas energy recovery units, incinerators, and small remote incinerators, an owner or operator may elect to install, calibrate, maintain, and operate a CEMS for monitoring particulate matter emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility who continuously monitors particulate matter emissions instead of conducting performance testing using EPA Method 5 at 40 CFR Part 60, Appendix A-3 or, as applicable, monitors with a particulate matter CPMS according to subdivision 9.10.r. shall install, calibrate, maintain, and operate a CEMS and shall comply with the requirements specified in paragraphs 9.10.n.1 through 9.10.n.13.

9.10.n.1. Notify the Secretary one month before starting use of the system;

9.10.n.2. Notify the Secretary one month before stopping use of the system;

9.10.n.3. Install, evaluate and operate the monitor in accordance with the requirements of Performance Specification 11 of Appendix B of 40 CFR Part 60 and the quality assurance requirements of Procedure 2 of Appendix F of 40 CFR Part 60 and 40 CFR § 60.13.

9.10.n.4. Complete no later than 180 days after the final compliance date for meeting the amended emission limitations, as specified under subsection 9.7 through paragraph 9.7.j.3, or within 180

days of notification to the Secretary of use of the continuous monitoring system, if the owner or operator was previously determining compliance by Method 5 at 40 CFR Part 60, Appendix A-3 performance tests, whichever is later.

9.10.n.5. The owner or operator of an affected facility may request that compliance with the particulate matter emission limit be determined using carbon dioxide measurements corrected to an equivalent of seven percent oxygen. The owner or operator shall establish the relationship between oxygen and carbon dioxide levels for the affected facility according to the procedures and methods specified in subparagraphs 9.9.t.4.A through 9.9.t.4.D of this rule.

9.10.n.6. The owner or operator of an affected facility shall conduct an initial performance test for particulate matter emissions as required under subsection 9.7 through paragraph 9.7.j.3. The owner or operator shall determine compliance with the particulate matter emission limit, if PM CEMS are elected for demonstrating compliance, by using the CEMS specified in subdivision 9.10.n to measure particulate matter. The owner or operator shall calculate a 30-day rolling average of one-hour arithmetic average emission concentrations, including CEMS data during startup and shutdown using Equation 19-19 in Section 12.4.1 of EPA Reference Method 19 at 40 CFR Part 60, Appendix A-7.

9.10.n.7. The owner or operator shall determine compliance with the particulate matter emission limit based on the 30-day rolling average calculated using Equation 19-19 in Section 12.4.1 of EPA Reference Method 19 at 40 CFR Part 60, Appendix A-7 from the one-hour arithmetic average of the CEMS outlet data.

9.10.n.8. At a minimum, the owner or operator shall obtain valid continuous monitoring system hourly averages as specified in subdivision 9.10.s.

9.10.n.9. The owner or operator shall express the one-hour arithmetic averages required under paragraph 9.10.n.7 in milligrams per dry standard cubic meter corrected to seven percent oxygen (or carbon dioxide) (dry basis), and the owner or operator shall use the one-hour arithmetic averages to calculate the 30-day rolling average emission concentrations. CEMS data during startup and shutdown are not corrected to seven percent oxygen and are measured at stack oxygen content. The owner or operator shall calculate the one-hour arithmetic averages using the data points required under 40 CFR § 60.13(e)(2).

9.10.n.10. The owner or operator shall use all valid CEMS data in calculating average emission concentrations, even if the minimum CEMS data requirements of paragraph 9.10.n.8 are not met.

9.10.n.11. The owner or operator shall operate the continuous CEMS according to Performance Specification 11 in Appendix B of 40 CFR Part 60.

9.10.n.12. During each relative accuracy test run of the CEMS required by Performance Specification 11 in Appendix B of 40 CFR Part 60, the owner or operator shall collect the particulate matter and oxygen (or carbon dioxide) data concurrently (or within a 30- to 60-minute period) by both the CEMS and the following test methods:

9.10.n.12.A. For particulate matter, EPA Reference Method 5 at 40 CFR Part 60, Appendix A-3.

9.10.n.12.B. For oxygen (or carbon dioxide), EPA Reference Method 3A or 3B at 40 CFR Part 60, Appendix A-2, as applicable.

9.10.n.13. The owner or operator shall perform quarterly accuracy determinations and daily calibration drift tests in accordance with Procedure 2 in Appendix F of 40 CFR Part 60.

9.10.o. To demonstrate continuous compliance with the carbon monoxide emissions limit, a facility may substitute use of a continuous automated sampling system for the carbon monoxide annual performance test to demonstrate compliance with the carbon monoxide emissions limits.

9.10.o.1. The owner or operator shall install, calibrate, maintain, and operate a CEMS for measuring carbon monoxide emissions discharged to the atmosphere and record the output of the system. The owner or operator shall follow the requirements under Performance Specification 4B of Appendix B of 40 CFR Part 60, the Quality Assurance Procedure 1 of Appendix F of 40 CFR Part 60, and the procedures under 40CFR § 60.13 for installation, evaluation, and operation of the CEMS.

9.10.o.2. Following the date that the initial performance test for carbon monoxide is completed or is required to be completed under subsection 9.7 through paragraph 9.7.j.3, the owner or operator may determine compliance with the carbon monoxide emission limit based on the 30-day rolling average of the hourly arithmetic average emission concentrations, including CEMS data during startup and shutdown, using CEMS outlet data. Except for CEMS data during startup and shutdown, the owner or operator shall express the one-hour arithmetic averages in parts per million corrected to seven percent oxygen (dry basis) and used to calculate the 30-day rolling average emission concentrations. CEMS data during startup and shutdown are not corrected to seven percent oxygen and are measured at stack oxygen content. The owner or operator shall calculate the one-hour arithmetic averages using the data points required under 40 CFR § 60.13(e)(2).

9.10.p. The owner or operator of an affected source with a bypass stack shall install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack including date, time, and duration.

9.10.q. For energy recovery units with a heat input capacity of 100 MMBtu/hr or greater that do not use a carbon monoxide continuous emission monitoring system, the owner or operator shall install, operate, and maintain the continuous oxygen monitoring system according to the procedures in paragraphs 9.10.q.1 through 9.10.q.4 by the compliance date specified in Table 45-18E. The owner or operator shall monitor oxygen level at the outlet of the energy recovery unit.

9.10.q.1. The owner or operator shall install the oxygen analyzer system by the initial performance test date specified in section 9.6;

9.10.q.2. The owner or operator shall operate the oxygen trim system in compliance with paragraph 9.10.q.3 at all times;

9.10.q.3. The owner or operator shall maintain the oxygen level such that the 30-day rolling average that is established as the operating limit for oxygen according to paragraph 9.10.q.4 is not below the lowest hourly average oxygen concentration measured during the most recent CO performance test; and

9.10.q.4. The owner or operator shall calculate and record a 30-day rolling average oxygen concentration using equation 19–19 in section 12.4.1 of EPA Reference Method 19 of Appendix A–7 of 40 CFR Part 60.

9.10.r. For energy recovery units with annual average heat input rates greater than or equal to 250 MMBtu/hour and waste-burning kilns, the owner or operator shall install, calibrate, maintain, and operate a PM CPMS and record the output of the system as specified in paragraphs 9.10.r.1 through 9.10.r.8 below. For other energy recovery units, the owner or operator may elect to use PM CPMS operated in accordance with this section. PM CPMS are suitable in lieu of using other CMS for monitoring PM compliance (e.g., bag leak detectors, ESP secondary power, PM scrubber pressure). The owner or operator shall:

9.10.r.1. Install, calibrate, operate, and maintain the PM CPMS according to the procedures

in the approved site-specific monitoring plan developed in accordance with subdivision 9.9 and subparagraphs 9.10.r.1.A through 9.10.r.1.C;

9.10.r.1.A. The owner or operator shall base the operating principle of the PM CPMS on in-stack or extractive light scatter, light scintillation, beta attenuation or mass accumulation of the exhaust gas or representative sample. The owner or operator shall express the reportable measurement output from the PM CPMS as milliamps.

9.10.r.1.B. The PM CPMS shall have a cycle time (i.e., period required to complete sampling, measurement, and reporting for each measurement) no longer than 60 minutes.

9.10.r.1.C. The PM CPMS shall be capable of detecting and responding to particulate matter concentrations increments no greater than 0.5 mg/actual cubic meter.

9.10.r.2. During the initial performance test or any such subsequent performance test that demonstrates compliance with the PM limit, adjust the site-specific operating limit in accordance with the results of the performance test according to the procedures specified in subdivision 9.6.c through paragraph 9.6.k.5;

9.10.r.3. Collect PM CPMS hourly average output data for all energy recovery unit or waste-burning kiln operating hours and express the PM CPMS output as millamps; and

9.10.r.4. Calculate the arithmetic 30-day rolling average of all of the hourly average PM CPMS output collected during all energy recovery unit or wasteburning kiln operating hours data (milliamps).

9.10.r.5. The owner or operator shall collect data using the PM CPMS at all times the energy recovery unit or waste-burning kiln is operating and at the intervals specified in subparagraph 9.10.r.1.B, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments), and any scheduled maintenance as defined in the site-specific monitoring plan.

9.10.r.6. The owner or operator shall use all the data collected during all energy recovery unit or waste-burning kiln operating hours in assessing compliance with the operating limit, except that the owner or operator shall not use the following in these calculations:

9.10.r.6.A. Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions or required monitoring system quality assurance or quality control activities conducted during monitoring system malfunctions (report any such periods in the annual deviation report); or

9.10.r.6.B. Any data collected during periods when the monitoring system is out of control as specified in the site-specific monitoring plan, repairs associated with periods when the monitoring system is out of control or required monitoring system quality assurance or quality control activities conducted during out of control periods (report emissions or operating levels and report any such periods in the annual deviation report); or

9.10.r.6.C. Any PM CPMS data recorded during periods of CEMS data during startup and shutdown.

9.10.r.7. The owner or operator shall record and make available to the Secretary upon request results of PM CPMS system performance audits, as well as the dates and periods from when the PM CPMS is out of control until completion of the corrective actions necessary to return the PM CPMS to operation consistent with the site-specific monitoring plan.

9.10.r.8. For any deviation of the 30-day rolling average PM CPMS average value from the established operating parameter limit, the owner or operator shall:

9.10.r.8.A. Within 48 hours of the deviation, visually inspect the air pollution control device;

9.10.r.8.B. If inspection of the air pollution control device identifies the cause of the deviation, take corrective action as soon as possible and return the PM CPMS measurement to within the established value; and

9.10.r.8.C. Within 30 days of the deviation or at the time of the annual compliance test, whichever comes first, conduct a PM emissions compliance test to determine compliance with the PM emissions limit and to verify the operation of the emission control device. Within 45 days of the deviation, the owner or operator shall reestablish the CPMS operating limit. The owner or operator is not required to conduct additional testing for any deviations that occur between the time of the original deviation and the PM emissions compliance test required under this subparagraph.

9.10.r.8.D. PM CPMS deviations leading to more than four required performance tests in a 12-month process operating period (rolling monthly) constitute a violation of section 9.

9.10.r.9. If the owner or operator uses a dry scrubber to comply with the emission limits of section 9, the owner or operator shall monitor the injection rate of each sorbent and maintain the three-hour block averages at or above the operating limits established during the hydrogen chloride performance test.

9.10.s. Monitoring data. -- For each continuous monitoring system required or optionally allowed under subdivisions 9.10.a through 9.10.r, the owner or operator shall monitor and collect data according to the following:

9.10.s.1. The owner or operator shall operate the monitoring system and collect data at all required intervals at all times compliance is required, except for periods of monitoring system malfunctions or out of control periods, repairs associated with monitoring system malfunctions or out of control periods (as specified in paragraph 9.12.e.15), and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. The owner or operator is required to affect monitoring system repairs in response to monitoring system malfunctions or out of control periods and to return the monitoring system to operation as expeditiously as practicable.

9.10.s.2. The owner or operator may not use data recorded during the monitoring system malfunctions, repairs associated with monitoring system malfunctions or out of control periods or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. The owner or operator shall use all the data collected during all other periods in assessing the operation of the control device and associated control system.

9.10.s.3. Except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out of control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments, failure to collect required data is a deviation of the monitoring requirements.

9.11. Recordkeeping requirements. -- The owner or operator shall maintain the items (as applicable) as specified in subdivisions 9.11.a, 9.11.b, and subdivisions 9.11.e through 9.11.w for a period of at least

five years:

9.11.a. Calendar date of each record;

9.11.b. Records of the data described in paragraphs 9.11.b.1 through 9.11.b.6:

9.11.b.1. The CISWI unit charge dates, times, weights, and hourly charge rates;

9.11.b.2. Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable;

9.11.b.3. Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable;

9.11.b.4. Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable;

9.11.b.5. For affected CISWI units that establish operating limits for controls other than wet scrubbers under subdivisions 9.6.f through 9.6.i or subdivisions 9.6.l through 9.6.m, the owner or operator shall maintain data collected for all operating parameters used to determine compliance with the operating limits. For energy recovery units using activated carbon injection or a dry scrubber, the owner or operator shall also maintain records of the load fraction and corresponding sorbent injection rate records;

9.11.b.6. If the owner or operator uses a fabric filter to comply with the emission limitations, the owner or operator shall record the date, time, and duration of each alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. The owner or operator shall also record the percent of operating time during each six-month period that the alarm sounds, calculated as specified in subdivision 9.6.e.

9.11.c. Reserved.

9.11.d. Reserved.

9.11.e. Identification of calendar dates and times for which data show a deviation from the operating limits in Table 45-18G or a deviation from other operating limits established under subdivisions 9.6.f through 9.6.i or subdivisions 9.6.l through 9.6.m, with a description of the deviations, reasons for the deviations, and a description of corrective actions taken;

9.11.f. The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations;

9.11.g. Records showing the names of CISWI unit operators who have completed review of the information in subdivision 9.5 h as required by subdivision 9.5.i, including the date of the initial review and all subsequent annual reviews;

9.11.h. Records showing the names of the CISWI operators who have completed the operator training requirements under subdivisions 9.5.a and 9.5.b, met the criteria for qualification under subdivisions 9.5.d and 9.5.e, and maintained or renewed their qualification under subdivisions 9.5.f or 9.5.g. Records shall include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications;

9.11.i. For each qualified operator, the phone and/or cell phone number at which he or she can be reached during operating hours;

9.11.j. Records of calibration of any monitoring devices as required under subdivisions 9.10.a through 9.10.r;

9.11.k. Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment;

9.11.l. The information listed in subdivision 9.5.h;

9.11.m. A daily log of the quantity of waste burned and the types of waste burned (always required);

9.11.n. Records of the annual air pollution control device inspections that are required for each CISWI unit subject to the emissions limits in Table 45-18F or Tables 45-18J through 45-18M and records of any required maintenance and any repairs not completed within ten days of an inspection or the timeframe established by the Secretary;

9.11.o. For continuously monitored pollutants or parameters, records of the following parameters measured using continuous monitoring systems:

9.11.o.1. All six-minute average levels of opacity;

9.11.o.2. All one-hour average concentrations of sulfur dioxide emissions indicating which data are CEMS data during startup and shutdown;

9.11.o.3. All one-hour average concentrations of nitrogen oxides emissions indicating which data are CEMS data during startup and shutdown;

9.11.o.4. All one-hour average concentrations of carbon monoxide emissions, indicating which data are CEMS data during startup and shutdown;

9.11.o.5. All one-hour average concentrations of particulate matter emissions, indicating which data are CEMS data during startup and shutdown;

9.11.o.6. All one-hour average concentrations of mercury emissions, indicating which data are CEMS data during startup and shutdown;

9.11.o.7. All one-hour average concentrations of hydrogen chloride emissions, indicating which data are CEMS data during startup and shutdown;

9.11.o.8. All one-hour average percent oxygen concentrations; and

9.11.o.9. All one-hour average PM CPMS readings or particulate matter CEMS outputs.

9.11.p. Records indicating use of the bypass stack, including dates, times, and durations;

9.11.q. If the owner or operator chooses to stack test less frequently than annually, consistent with paragraphs 9.9.y.1, 9.9.z.1 and 9.9.y.2, 9.9.z.2, shall keep annual records that document that the emissions in the previous stack test(s) were less than 75% of the applicable emission limit and document that there was no change in source operations, including fuel composition and operation of air pollution control equipment that would cause emissions of the relevant pollutant to increase within the past year.

9.11.r. Records of the occurrence and duration of each malfunction of operation (i.e., process equipment) or the air pollution control and monitoring equipment;

9.11.s. Records of all required maintenance performed on the air pollution control and

monitoring equipment;

9.11.t. Records of actions taken during periods of malfunction to minimize emissions in accordance with 40 CFR § 60.11(d), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation;

9.11.u. For operating units that combust non-hazardous secondary materials that the Secretary has determined are not solid waste pursuant to 40 CFR § 241.3(b)(1), records which document how the secondary material meets each of the legitimacy criteria under 40 CFR § 241.3(d)(1); if the owner or operator combusts a fuel that has been processed from a discarded non-hazardous secondary material pursuant to 40 CFR § 241.3(b)(4), records as to how the operations that produced the fuel satisfies the definition of processing in 40 CFR § 241.2 and each of the legitimacy criteria in 40 CFR § 241.3(d)(1); if the fuel received a non-waste determination pursuant to the petition process submitted under 40 CFR § 241.3(c), records that document how the fuel satisfies the requirements of the petition process; for operating units that combust nonhazardous secondary materials as fuel per 40 CFR § 241.4, records documenting that the material is a listed non-waste under 40 CFR § 41.4(a);

9.11.v. Records of the criteria used to establish that the unit qualifies as a small power production facility under Section 3(17)(C) of the Federal Power Act (16 U.S.C. § 796(17)(C)) and that the waste material the unit is proposed to burn is homogeneous; and

9.11.w. Records of the criteria used to establish that the unit qualifies as a cogeneration facility under Section 3(18)(B) of the Federal Power Act (16 U.S.C. § 796(18)(B)) and that the waste material the unit is proposed to burn is homogeneous.

9.12. Reporting requirements.

9.12.a. In addition to the summary of the reporting requirements set out in Table 45-18I, the owner or operator shall:

9.12.b. Submit a waste management plan no later than the date specified in Table 45-18E for submittal of the final control plan;

9.12.c. Submit the information specified in paragraphs 9.12.c.1 through 9.12.c.3 no later than 60 days following the initial performance test, with all reports signed by the facilities manager:

9.12.c.1. The complete test report for the initial performance test results obtained under subdivision 9.8.a, as applicable;

9.12.c.2. The values for the site-specific operating limits established in subdivision 9.6.c through paragraph 9.6.k.5 or subdivisions 9.6.l through 9.6.m; and

9.12.c.3. Documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by subdivision 9.10.b, if the owner or operator is using a fabric filter to comply with the emission limitations.

9.12.d. Submit an annual report no later than 12 months following the submission of the information in subdivision 9.12.c and no more than every 12 months thereafter. If the unit is subject to Title V permitting requirements under 45CSR30, the owner or operator may be required by the permit to submit these reports more frequently.

9.12.e. The annual report required under subdivision 9.12.d shall include the items listed in paragraphs 9.12.e.1 through 9.12.e.16 below:

9.12.e.1. Company name and address;

9.12.e.2. Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report;

9.12.e.3. Date of report and beginning and ending dates of the reporting period;

9.12.e.4. The values for the operating limits established pursuant to subdivision 9.6.c through paragraph 9.6.k.5 or subdivisions 9.6.l through 9.6.m;

9.12.e.5. A statement that there was no deviation from the emission limitations or operating limits during the reporting period, if the facility has not experienced a deviation from any applicable emission limitation or operating limit;

9.12.e.6. The highest recorded three-hour average and the lowest recorded three-hour average, as applicable, for each operating parameter recorded for the calendar year being reported;

9.12.e.7. Information recorded under paragraph 9.11.b.6 and subdivisions 9.11.c through 9.11.e for the calendar year being reported;

9.12.e.8. If a performance test was conducted during the reporting period, the process unit tested, the pollutant tested and the performance test date. The owner or operator shall not submit the performance test report later than the date of submittal of the annual report and shall follow the procedure specified in subparagraph 9.12.j.2.A;

9.12.e.9. A statement that the facility met the requirements of paragraph 9.9.z.1 or 9.9.z.2, and, therefore, was not required to conduct a performance test during the reporting period, if the facility met the requirements of paragraph 9.9.z.1 or 9.9.z.2, and the owner or operator did not conduct a performance test during the reporting period;

9.12.e.10. Documentation of periods when all qualified CISWI unit operators were unavailable for more than eight hours, but less than two weeks;

9.12.e.11. A record including the number, duration, and brief description for each type of malfunction that occurred during the reporting period and that caused or may have caused an exceedance of any applicable emission limitation, if the facility experienced a malfunction during the reporting period, as well as a description of actions taken during a malfunction of an affected source to minimize emissions in accordance with 40 CFR § 60.11(d), including actions taken to correct a malfunction;

9.12.e.12. For each deviation from an emission or operating limitation that occurs for a CISWI unit for which the owner or operator is not using a CMS to comply with the emission or operating limitations in section 9, the annual report shall contain the following information.

9.12.e.12.A. The total operating time of the CISWI unit at which the deviation occurred during the reporting period; and

9.12.e.12.B. Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

9.12.e.13. If there were periods during which the continuous monitoring system, including the CEMS, was out of control as specified in paragraph 9.12.e.15, the annual report shall contain the following information for each deviation from an emission or operating limitation occurring for a CISWI unit for which the owner or operator is using a continuous monitoring system to comply with the emission and operating limitations in section 9:

9.12.e.13.A. The date and time that each malfunction started and stopped;

9.12.e.13.B. The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks;

9.12.e.13.C. The date, time, and duration that each continuous monitoring system was out of control, including start and end dates and hours and descriptions of corrective actions taken;

9.12.e.13.D. The date and time that each deviation started and stopped and whether each deviation occurred during a period of malfunction or during another period;

9.12.e.13.E. A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period;

9.12.e.13.F. The total duration of the deviations during the reporting period categorized according to each of the following attributed causes: control equipment problems, process problems, other known causes, and other unknown causes;

9.12.e.13.G. A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total operating time of the CISWI unit at which the continuous monitoring system downtime occurred during that reporting period;

9.12.e.13.H. An identification of each parameter and pollutant that was monitored at the CISWI unit;

9.12.e.13.I. A brief description of the CISWI unit;

9.12.e.13.J. A brief description of the continuous monitoring system;

9.12.e.13.K. The date of the latest continuous monitoring system certification or audit; and

9.12.e.13.L. A description of any changes in continuous monitoring system, processes or controls since the last reporting period.

9.12.e.14. If there were periods during which the continuous monitoring system, including the CEMS, was not out of control as specified in paragraph 9.12.e.15, a statement that there were not periods during which the continuous monitoring system was out of control during the reporting period;

9.12.e.15. A continuous monitoring system is out of control if any of the following occur:

9.12.e.15.A. The zero (low-level), mid-level (if applicable) or high-level calibration drift exceeds two times the applicable calibration drift specification in the applicable performance specification or in the relevant standard;

9.12.e.15.B. The continuous monitoring system fails a performance test audit (e.g., cylinder gas audit), relative accuracy audit, relative accuracy test audit or linearity test audit; or

9.12.e.15.C. The continuous opacity monitoring system calibration drift exceeds two times the limit in the applicable performance specification in the relevant standard.

9.12.e.16. For energy recovery units, include the annual heat input and average annual heat input rate of all fuels being burned in the unit to verify which subcategory of energy recovery unit applies;

9.12.f. Deviation from the operating limits or emission limitations.

9.12.f.1. The owner or operator shall submit a deviation report if any recorded three-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under section 9, if the bag leak detection system alarm sounds for more than five percent of the operating time for the six-month reporting period or if a performance test was conducted that deviated from any emission limitation.

9.12.f.2. The owner or operator shall submit the deviation report by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data collected during the second half of the calendar year (July 1 to December 31).

9.12.g. In each report required under subdivision 9.12.f, for any pollutant or parameter that deviated from the emission limitations or operating limits specified in section 9, the owner or operator shall include the four items described in paragraphs 9.12.g.1 through 9.12.g.4 below:

9.12.g.1. The calendar dates and times the unit deviated from the emission limitations or operating limit requirements;

9.12.g.2. The averaged and recorded data for those dates;

9.12.g.3. Durations and causes of the following:

9.12.g.3.A. Each deviation from emission limitations or operating limits and corrective actions;

9.12.g.3.B. Bypass events and corrective actions.

9.12.g.4. A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels, the process unit tested, the pollutant tested and the date that the performance test was conducted. The owner or operator shall not submit the performance test report later than the date of submittal of the deviation report according to the subparagraph 9.12.j.2.A.

9.12.h. Deviation from the requirement to have a qualified operator accessible. -- If no qualified operator is accessible for two weeks or more, the owner or operator shall take the two actions in paragraphs 9.12.h.1 and 9.12.h.2 below:

9.12.h.1. Submit a notification of the deviation within ten days that includes the three items in subparagraphs 9.12.h.1.A through 9.12.h.1.C below:

9.12.h.1.A. A statement of what caused the deviation;

9.12.h.1.B. A description of what the owner or operator is doing to ensure that a qualified operator is accessible; and

9.12.h.1.C. The date when the owner or operator anticipates that a qualified operator will be available;

9.12.h.2. Submit a status report to the Administrator and Secretary every four weeks that includes the three items in subparagraphs 9.12.h.2.A through 9.12.h.2.C below:

9.12.h.2.A. A description of what the owner or operator is doing to ensure that a qualified operator is accessible;

9.12.h.2.B. The date when the owner or operator anticipates that a qualified operator will be accessible; and

9.12.h.2.C. A request for approval from the Administrator to continue operation of the CISWI unit.

9.12.h.3. If the Administrator shuts down the unit under the provisions of paragraph 9.12.h.2 due to the owner's or operator's failure to provide an accessible qualified operator, the owner or operator shall notify the Administrator and Secretary that the unit is resuming operation once a qualified operator is accessible.

9.12.i. Other notifications and reports.

9.12.i.1. The owner or operator shall submit notifications as provided by 40 CFR § 60.7 and 45CSR16.

9.12.i.2. If the owner or operator ceases combusting solid waste but continues to operate, the owner or operator shall provide 30 days prior notice of the effective date of the waste-to-fuel switch, consistent with subdivision 9.9.a. The notification shall identify:

9.12.i.2.A. The name of the owner or operator of the CISWI unit, the location of the source, the emissions unit(s) that will cease burning solid waste, and the date of the notice;

9.12.i.2.B. The currently applicable subcategory under section 9, and any 40 CFR Part 63 subpart and subcategory that will be applicable after the unit ceases combusting solid waste;

9.12.i.2.C. The fuel(s), non-waste material(s) and solid waste(s) the CISWI unit is currently combusting and has combusted over the past six months, and the fuel(s) or non-waste materials the unit will commence combusting;

9.12.i.2.D. The date on which the unit became subject to the currently applicable emission limits; and

9.12.i.2.E. The date upon which the unit will cease combusting solid waste and the date (if different) that the owner or operator intends for any new requirements to become applicable (i.e., the effective date of the waste to fuel switch), consistent with subparagraphs 9.12.i.2.B and 9.12.i.2.C.

9.12.j. Form of reports.

9.12.j.1. The owner or operator shall submit initial, annual, and deviation reports electronically on or before the submittal due dates. The owner or operator shall submit the reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) on EPA's website. Once the XML schema is available, the owner or operator shall use the appropriate electronic report in CEDRI for this subpart or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the CEDRI website. If the reporting form specific to this subpart is not available in CEDRI at the time that the report is due, the owner or operator shall submit the report to the Administrator at the appropriate address listed in 40 CFR § 60.4. Once the form has been available in CEDRI for 90 calendar days, the owner or operator shall submit all reports via CEDRI. The owner or operator shall submit the reports by the deadlines specified in this subpart, regardless of the method by which the owner or operator submits the report.

9.12.j.2. Submit results of performance tests and CEMS performance evaluation tests as follows:

9.12.j.2.A. Within 60 days after the date of completing each performance test as required by section 9, the owner or operator shall submit the results of the performance tests following the

procedure specified in either part 9.12.j.2.A.1 or 9.12.j.2.A.2 below:

9.12.j.2.A.1. For data collected using test methods supported by the EPA's electronic reporting tool (ERT) at the time of the test, as listed on the EPA's ERT website, the owner or operator shall submit the results of the performance test to the EPA via the CEDRI, which can be accessed through the EPA's CDX website. The owner or operator shall submit performance test data in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the XML schema listed on the EPA's ERT website. If the owner or operator claims that some of the performance test information being submitted is confidential business information (CBI), the owner or operator shall submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The owner or operator shall clearly mark the electronic media as CBI and mail it to the address listed on EPA's website. The owner or operator shall submit the same ERT or alternate file with the CBI omitted to the EPA via the EPA's CDX as described earlier in this paragraph; and

9.12.j.2.A.2. For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, the owner or operator shall submit the results of the performance test to the Administrator at the appropriate address listed in 40 CFR. § 60.4.

9.12.j.2.B. Within 60 days after the date of completing each CEMS performance evaluation test as defined and required by section 9, the owner or operator shall submit the performance evaluation results following the procedures specified in either part 9.12.j.2.B.1 or 9.12.j.2.B.2 below:

9.12.j.2.B.1. For performance evaluations of continuous monitoring systems measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation, the owner or operator shall submit the performance evaluation results to the EPA via the CEDRI. The owner or operator shall submit the performance evaluation data in a file format generated through the use of the EPA's ERT or an alternate file format consistent with the XML schema listed on the EPA's ERT website. If the owner or operator claims that some of the performance evaluation information being submitted is CBI, the owner or operator shall submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage media to the EPA. The owner or operator shall clearly mark the electronic storage media as CBI and mail it to the appropriate address listed on EPA's ERT website. The owner or operator shall submit the same ERT or alternate file with the CBI omitted to the EPA via the EPA's CDX as described earlier in this paragraph; and

9.12.j.2.B.2. For any performance evaluations of continuous monitoring systems measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation, the owner or operator shall submit the performance evaluation results to the Administrator at the appropriate address listed in 40 CFR. § 60.4.

9.12.k. Changes to reporting dates. -- If the Secretary agrees, the owner or operator may change the semiannual or annual reporting dates by following the procedures set out in 40 CFR § 60.19(c).

9.13. Requirements for air curtain incinerators.

9.13.a. Description. -- An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor. Air curtain incinerators are not to be confused with conventional combustion devices with enclosed fireboxes and controlled air technology, such as mass burn, modular, and fluidized bed combustors.

9.13.b. Air curtain incinerators that burn only the materials listed in paragraphs 9.13.b.1 through 9.13.b.3 below are only required to meet the requirements under subsections 9.3 and 13.3.

9.13.b.1. 100% wood waste;

9.13.b.2. 100% clean lumber; or

9.13.b.3. 100% mixture of only wood waste, clean lumber, and/or yard waste.

9.13.c. Increments of progress. -- If the owner or operator plans to achieve compliance more than one year following the effective date of West Virginia's CAA § 111(d)/129 plan approval, the owner or operator shall meet the two increments of progress specified below:

9.13.c.1. Submit a final control plan; and

9.13.c.2. Achieve final compliance.

9.13.d. Table 45-18E specifies compliance dates for each of the increments of progress.

9.13.e. Notifications of achievement. -- The owner's or operator's notification of achievement of increments of progress shall include the three items described below:

9.13.e.1. Notification that the owner or operator has achieved the increment of progress;

9.13.e.2. Any items required to be submitted with each increment of progress (refer to subdivision 9.13.h); and

9.13.e.3. Signature of the owner or operator of the incinerator.

9.13.f. Notifications for achieving increments of progress shall be postmarked no later than ten business days after the compliance date for the increment.

9.13.g. Failure to meet an increment of progress. -- If the owner or operator fails to meet an increment of progress, the owner or operator shall submit a notification to the Secretary postmarked within ten business days after the date for that increment of progress in Table 45-18E. The owner or operator shall inform the Secretary that the unit did not meet the increment, and the owner or operator shall continue to submit reports each subsequent calendar month until the unit meets the increment of progress.

9.13.h. For the control plan increment of progress, the owner or operator shall satisfy the two requirements specified below:

9.13.h.1. Submit the final control plan, including a description of any devices for air pollution control and any process changes that the owner or operator will use to comply with the emission limitations and other requirements of section 9; and

9.13.h.2. Maintain an onsite copy of the final control plan.

9.13.i. For the final compliance increment of progress, the owner or operator shall complete all process changes and retrofit construction of control devices as specified in the final control plan so that, if the affected incinerator is brought online, all necessary process changes and air pollution control devices would operate as designed.

9.13.j. Closure and restart.

9.13.j.1. If the owner or operator closes the incinerator but will reopen it prior to the final compliance date, the unit shall meet the increments of progress specified in subdivision 9.13.c.

9.13.j.2. If the owner or operator closes the incinerator but will restart it after the final compliance date, the owner or operator shall complete emission control retrofits and meet the emission limitations on the date the incinerator restarts operation.

9.13.k. Permanent closure. -- If the owner or operator plans to close the incinerator rather than comply with section 9, the owner or operator shall submit a closure notification, including the date of closure, to the Secretary by the date the final control plan is due.

9.13.l. Emission limitations for air curtain incinerators. -- After the date the initial stack test is required or completed (whichever is earlier), the owner or operator shall meet the below limitations:

9.13.l.1. Maintain opacity to less than or equal to ten percent opacity (as determined by the average of three one-hour blocks consisting of ten six-minute average opacity values), except as described in paragraph 9.13.l.2.; or

9.13.l.2. Maintain opacity to less than or equal to 35% opacity (as determined by the average of three one-hour blocks consisting of ten six-minute average opacity values) during the startup period that is within the first 30 minutes of operation.

9.13.m. Opacity monitoring for air curtain incinerators. – The owner or operator shall:

9.13.m.1. Use Method 9 of Appendix A of 40 CFR Part 60 to determine compliance with the opacity limitation;

9.13.m.2. Conduct an initial test for opacity as specified in 40 CFR § 60.8 no later than 180 days after the final compliance date; and

9.13.m.3. Conduct annual tests no more than 12 calendar months following the date of the initial opacity test.

9.13.n. Recordkeeping and reporting requirements for air curtain incinerators. – The owner or operator shall:

9.13.n.1. Keep records of results of all initial and annual opacity tests onsite in either paper copy or electronic format, unless the Secretary approves another format, for at least five years;

9.13.n.2. Make all records available to the Secretary;

9.13.n.3. Submit an initial report no later than 60 days following the initial opacity test, which includes the information specified in subparagraphs below:

9.13.n.3.A. The types of materials the owner or operator plans to combust in the air curtain incinerator; and

9.13.n.3.B. The results (as determined by the average of three one-hour blocks consisting of ten six-minute average opacity values) of the initial opacity tests.

9.13.n.4. Submit annual opacity test results to the Secretary within 12 months following the previous report; and

9.13.n.5. Submit initial and annual opacity test reports to the Secretary as electronic or paper copy on or before the applicable submittal date and keep a copy onsite for a period of five years.

9.14. Authority. -- The following authorities are retained by the Administrator and are not transferred or delegated to the Secretary:

9.14.a. Approval of alternatives to the emission limitations in Table 45-18F and operating limits established under subdivision 9.6.c;

9.14.b. Approval of major alternatives to test methods;

9.14.c. Approval of major alternatives to monitoring;

9.14.d. Approval of major alternatives to recordkeeping and reporting;

9.14.e. [Reserved].

9.14.f. The requirements in subdivision 9.6.l of this rule;

9.14.g. The requirements in subparagraph 9.5.k.2.B of this rule;

9.14.h. Approval of alternative opacity emission limits in subdivisions 9.6.a and 9.6.b of this rule and under 40 CFR §§ 60.11(e)(6) through (e)(8);

9.14.i. Performance test and data reduction waivers under subdivision 9.7.j of this rule and 40 CFR §§ 60.8(b)(4) and (5); and

9.14.j. Determination of whether a qualifying small power production facility or cogeneration facility under paragraphs 9.2.d.5 and 9.2.d.6 of this rule is combusting homogenous waste as that term is defined in 40 CFR § 60.2265.

**§45-18-10. Requirements for new other solid waste incineration units.**

10.1. Requirements for new OSWI units. -- The owner or operator of another solid waste incineration unit (OSWI unit) under subsection 10.2 shall comply with all applicable standards of performance, requirements, and provisions of 40 CFR Part 60, Subpart EEEE, including any reference methods, performance specifications, and other test methods associated with Subpart EEEE. No person shall construct or operate, or cause to be constructed or operated, a new OSWI unit that results in a violation of 40 CFR Part 60, Subpart EEEE or this rule.

10.2. Applicability. -- The owner or operator of a OSWI unit that meets the following criteria is subject to the requirements for new OSWI units set forth in section 10. A new OSWI unit is an OSWI unit that either:

10.2.a. Commenced construction after December 9, 2004; or

10.2.b. Commenced modification or reconstruction after June 16, 2006.

**§45-18-11. Requirements for new sewage sludge incinerators.**

11.1. Requirements for new SSI units. -- The owner or operator of a SSI unit under subsection 11.2 shall comply with all applicable standards of performance, requirements, and provisions of 40 CFR Part 60, Subpart LLLL, including any reference methods, performance specifications, and other test methods associated with Subpart LLLL. No person shall construct, reconstruct, modify or operate, or cause to be constructed, reconstructed, modified or operated, a new SSI unit that results in a violation of 40 CFR Part 60, Subpart LLLL or this rule.

11.2. Applicability. -- The owner or operator of a SSI unit that meets the following criteria is subject to the requirements for new SSI units set forth in section 11. A new SSI unit is a SSI unit that either:

11.2.a. Commenced construction after October 14, 2010; or

11.2.b. Commenced modification after September 21, 2011.

**§45-18-12. Secretary.**

12.1. Any and all references in 40 CFR Part 60, Subparts Ce, Eb, Ec, AAAA, CCCC, EEEE, and LLLL to "the Administrator" are amended to be "the "Secretary", except in the following references, which shall remain "Administrator":

12.1.a. Where the Federal Regulations specifically provide that the Administrator shall retain authority and not transfer such authority to the Secretary;

12.1.b. Where provisions occur which refer to:

12.1.b.1. Alternate means of emission limitations;

12.1.b.2. Alternate control technologies;

12.1.b.3. Innovative technology waivers;

12.1.b.4. Alternate test methods;

12.1.b.5. Alternate monitoring methods;

12.1.b.6. Waivers/adjustments to recordkeeping and reporting;

12.1.b.7. Applicability determinations;

12.1.b.8. The requirements of 40 CFR § 60.56c(i) establishing operating parameters when using controls other than those listed in 40 CFR § 60.56c(d);

12.1.b.9. Alternative methods of demonstrating compliance under 40 CFR § 60.8;

12.1.b.10. Performance test and data reduction waivers under 40 CFR § 60.8(b);

12.1.b.11. Alternate operating limits established under section 9;

12.1.b.12. The qualified operators "temporarily not accessible requirements under section 9;

12.1.b.13. Approval of alternative opacity emission limits under section 9 of this rule and 40 CFR § 60.11(e)(6); and

12.1.b.14. Determination of whether a qualifying small power production facility or cogeneration facility under section 9 is combusting homogeneous waste.

12.1.c. Where the context of the regulation clearly requires otherwise.

**§45-18-13. Permits.**

13.1. The owner or operator of existing HMIWI units shall operate pursuant to a Title V permit in

accordance with the requirements of 45CSR30.

13.2. The owner or operator of a new HMIWI unit shall submit to the Secretary a complete application for a Title V permit in accordance with the requirements of 45CSR30 within twelve (12) months after commencing operation.

13.3. The owner or operator of an existing CISWI unit or air curtain incinerator subject to section 9 shall operate pursuant to a permit issued under § 129(e) of the CAA and 45CSR30.

13.4. The owner or operator of a new CISWI unit shall operate pursuant to a CAA Title V permit in accordance with the requirements of 45CSR30.

13.5. The owner or operator of a new OSWI unit shall submit a complete application for a Title V permit in accordance with the requirements of 45CSR30 within twelve (12) months after commencing operation: Provided, that the Secretary may require a new OSWI unit to apply for and obtain a Title V permit prior to this date, as specified in 40 CFR § 60.2967(b).

13.6. The owner or operator of a new SSI unit shall apply for and obtain a Title V permit in accordance with the requirements of 45CSR30, unless the unit meets the relevant requirements for and exemption set forth in 40 CFR § 60.4780.

13.7. Nothing contained in this rule shall be construed or inferred to mean that permit requirements in accordance with applicable rules shall be in any way limited or inapplicable, including but not limited to the permitting requirements under 45CSR13, 45CSR14, 45CSR19, 45CSR25 and 45CSR30.

**§45-18-14. Exemptions.**

14.1. The exemption provisions under 40 CFR Part 60, Subparts Eb, Ec, AAAA, CCCC, EEEE, and LLLL are incorporated in this rule.

14.2. Temporary air curtain incinerators approved by the Secretary under the requirements of 45CSR6 that are operated for the disposal of only on-site land clearing debris (as defined in 45CSR6) are exempt from the requirements of this rule.

14.3. Temporary incinerators approved by the Secretary under the requirements of 45CSR6 that are operated for the disposal of animal or poultry remains and related pathological waste are exempt from the requirements of this rule.

14.4. Pathological waste incineration units. -- Any institutional waste incineration unit, very small municipal waste combustion unit, incinerator or combustor is exempt from the requirements of this rule: Provided, that:

14.4.a. The unit burns 90% or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste or chemotherapeutic waste;

14.4.b. The owner or operator of the unit keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste or chemotherapeutic waste is incinerated;

14.4.c. The unit is subject to the requirements of 45CSR6 or 45CSR25; and

14.4.d. The owner or operator of the unit notifies the Administrator and the Secretary that the unit meets these criteria.

14.5. Any incinerator or combustor subject to 40 CFR Part 60, Subparts Cb, Cc, E, Ea, O, WWW, BBBB, FFFF or MMMM is exempt from the requirements of this rule.

14.6. Any incinerator or combustor subject to 42 U.S.C. § 6925, 45CSR25, and 33CSR20 is exempt from the requirements of this rule.

14.7. Any combustor subject to 40 CFR Part 63, Subpart EEE is exempt from the requirements of this rule.

**§45-18-15. Effect of the rule.**

15.1. Nothing in this rule shall be construed to allow or permit the installation, establishment or construction of a new municipal or commercial solid waste facility utilizing incineration technology for the purpose of solid waste incineration in violation of W.Va. Code § 22-15-19.

**§45-18-16. Inconsistency between rules.**

16.1. In the event of any inconsistency between this rule and any other rule of the Division of Air Quality, the inconsistency shall be resolved by the determination of the Secretary, and the determination shall be based upon the application of the more stringent provision, term, condition, method or rule.

**TABLE 45-18A**
**Emissions limits for small, medium, and large HMIWI at designated facilities as set forth in 45CSR§ 18-7.2.a.1.**

| Pollutant | Units (7 percent oxygen, dry basis) | Emissions Limits | | | Averaging Time[1] | Compliance Method2 |
|---|---|---|---|---|---|---|
| | | HMIWI Size | | | | |
| | | Small | Medium | Large | | |
| Particulate matter | Milligrams per dry standard cubic meter (mg/dscm) (grains per dry standard cubic foot (gr/dscf)) | 115 (0.05) | 69 (0.03) | 34 (0.015) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 5 of Appendix A-3 of 40 CFR Part 60, or EPA Reference Method 26A or 29 of Appendix A-8 of 40 CFR Part 60. |
| Carbon monoxide | Parts per million by volume (ppmv) | 40 | 40 | 40 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 10 or 10B of Appendix A-4 of 40 CFR Part 60. |
| Dioxins/furans | Nanograms per dry standard cubic meter total dioxins/furans (ng/dscm) (grains per billion dry standard cubic feet (gr/109dscf)) or ng/dscm TEQ (gr/109dscf) | 125 (55) or 2.3 (1.0) | 125 (55) or 2.3 (1.0) | 125 (55) or 2.3 (1.0) | 3-run average (4-hour minimum sample time per run) | EPA Reference Method 23 of Appendix A-7 of 40 CFR Part 60. |
| Hydrogen chloride | ppmv or percent reduction | 100 or 93% | 100 or 93% | 100 or 93% | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 26 or 26A of Appendix A-8 of 40 CFR Part 60. |
| Sulfur dioxide | ppmv | 55 | 55 | 55 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 6 or 6C of Appendix A-4 of 40 CFR Part 60. |
| Nitrogen oxides | ppmv | 250 | 250 | 250 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 7 or 7E of Appendix A-4 of 40 CFR Part 60. |
| Lead | mg/dscm (grains per thousand dry standard cubic feet (gr/$10^3$dscf)) or percent reduction | 1.2 (0.52) or 70% | 1.2 (0.52) or 70% | 1.2 (0.52) or 70% | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |
| Cadmium | mg/dscm (gr/$10^3$dscf) or percent reduction | 0.16 (0.07) or 65% | 0.16 (0.07) or 65% | 0.16 (0.07) or 65% | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |
| Mercury | mg/dscm (gr/$10^3$dscf) or percent reduction | 0.55 (0.24) or 85% | 0.55 (0.24) or 85% | 0.55 (0.24) or 85% | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |

[1]Except as allowed under 40 CFR § 60.56c(c) for HMIWI equipped with CEMS.
[2]Does not include CEMS and approved alternative non-EPA test methods allowed under 40 CFR § 60.56c(b).

**TABLE 45-18B**
**Emissions limits for small, medium, and large HMIWI at designated facilities as set forth in 45CSR§§ 18-7.2.a.1 and 7.2.a.2.**

| Pollutant | Units (7 percent oxygen, dry basis) | Emissions Limits HMIWI Size | | | Averaging Time[1] | Compliance Method2 |
|---|---|---|---|---|---|---|
| | | Small | Medium | Large | | |
| Particulate matter | Milligrams per dry standard cubic meter (mg/dscm) (grains per dry standard cubic foot (gr/dscf)) | 66 (0.029) | 46 (0.020) | 25 (0.011) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 5 of Appendix A-3 of 40 CFR Part 60, or EPA Reference Method 26A or 29 of Appendix A-8 of 40 CFR Part 60. |
| Carbon monoxide | Parts per million by volume (ppmv) | 20 | 5.5 | 11 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 10 or 10B of Appendix A-4 of 40 CFR Part 60. |
| Dioxins/furans | Nanograms per dry standard cubic meter total dioxins/furans (ng/dscm) (grains per billion dry standard cubic feet (gr/109dscf)) or ng/dscm TEQ (gr/109dscf) | 16 (7.0) or 0.013 (0.0057) | 0.85 (0.37) or 0.020 (0.0087) | 9.3 (4.1) or 0.054 (0.024) | 3-run average (4-hour minimum sample time per run) | EPA Reference Method 23 of Appendix A-7 of 40 CFR Part 60. |
| Hydrogen chloride | ppmv | 44 | 7.7 | 6.6 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 26 or 26A of Appendix A-8 of 40 CFR Part 60. |
| Sulfur dioxide | ppmv | 4.2 | 4.2 | 9.0 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 6 or 6C of Appendix A-4 of 40 CFR Part 60. |
| Nitrogen oxides | ppmv | 190 | 190 | 140 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 7 or 7E of Appendix A-4 of 40 CFR Part 60. |
| Lead | mg/dscm (grains per thousand dry standard cubic feet (gr/$10^3$dscf)) | 0.31 (0.14) | 0.018 (0.0079) | 0.036 (0.016) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |
| Cadmium | mg/dscm (gr/$10^3$dscf) | 0.017 (0.0074) | 0.013 (0.0057) | 0.0092 (0.0040) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |
| Mercury | mg/dscm (gr/$10^3$dscf) | 0.014 (0.0061) | 0.025 (0.011) | 0.018 (0.0079) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |

[1]Except as allowed under 40 CFR § 60.56c(c) for HMIWI equipped with CEMS.
[2]Does not include CEMS and approved alternative non-EPA test methods allowed under 40 CFR § 60.56c(b).

**TABLE 45-18C**
**Emissions limits for small HMIWI which meet the criteria under 45CSR§ 18-7.3.b.1.**

| Pollutant | Units (7 percent oxygen, dry basis) | HMIWI Emissions Limits | Averaging Time[1] | Compliance Method2 |
|---|---|---|---|---|
| Particulate matter | mg/dscm (gr/dscf) | 197 (0.086) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 5 of Appendix A-3 of 40 CFR Part 60, or EPA Reference Method 26A or 29 of Appendix A-8 of 40 CFR Part 60. |
| Carbon monoxide | ppmv | 40 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 10 or 10B of Appendix A-4 of 40 CFR Part 60. |
| Dioxins/furans | ng/dscm total dioxins/furans (gr/109dscf) or ng/dscm TEQ (gr/109dscf) | 800 (350) or 15 (6.6) | 3-run average (4-hour minimum sample time per run) | EPA Reference Method 23 of Appendix A-7 of 40 CFR Part 60. |
| Hydrogen chloride | ppmv | 3,100 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 26 or 26A of Appendix A-8 of 40 CFR Part 60. |
| Sulfur dioxide | ppmv | 55 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 6 or 6C of Appendix A-4 of 40 CFR Part 60. |
| Nitrogen oxides | ppmv | 250 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 7 or 7E of Appendix A-4 of 40 CFR Part 60. |
| Lead | mg/dscm (gr/$10^3$dscf) | 10 (4.4) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |
| Cadmium | mg/dscm (gr/$10^3$dscf) | 4 (1.7) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |
| Mercury | mg/dscm (gr/$10^3$dscf) | 7.5 (3.3) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |

[1]Except as allowed under 40 CFR § 60.56c(c) for HMIWI equipped with CEMS.
[2]Does not include CEMS and approved alternative non-EPA test methods allowed under 40 CFR § 60.56c(b).

**TABLE 45-18D**
**Emissions limits for small HMIWI which meet the criteria under 45CSR§ 18-7.3.b.2.**

| Pollutant | Units (7 percent oxygen, dry basis) | HMIWI Emissions Limits | Averaging Time[1] | Compliance Method2 |
|---|---|---|---|---|
| Particulate matter | mg/dscm (gr/dscf) | 87 (0.038) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 5 of Appendix A-3 of 40 CFR Part 60, or EPA Reference Method 26A or 29 of Appendix A-8 of 40 CFR Part 60. |
| Carbon monoxide | ppmv | 20 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 10 or 10B of Appendix A-4 of 40 CFR Part 60. |
| Dioxins/furans | ng/dscm total dioxins/furans (gr/109dscf) or ng/dscm TEQ (gr/109dscf) | 240 (100) or 5.1 (2.2) | 3-run average (4-hour minimum sample time per run) | EPA Reference Method 23 of Appendix A-7 of 40 CFR Part 60. |
| Hydrogen chloride | ppmv | 810 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 26 or 26A of Appendix A-8 of 40 CFR Part 60. |
| Sulfur dioxide | ppmv | 55 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 6 or 6C of Appendix A-4 of 40 CFR Part 60. |
| Nitrogen oxides | ppmv | 130 | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 7 or 7E of Appendix A-4 of 40 CFR Part 60. |
| Lead | mg/dscm (gr/$10^3$dscf) | 0.50 (0.22) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |
| Cadmium | mg/dscm (gr/$10^3$dscf) | 0.11 (0.048) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |
| Mercury | mg/dscm (gr/$10^3$dscf) | 0.0051 (0.0022) | 3-run average (1-hour minimum sample time per run) | EPA Reference Method 29 of Appendix A-8 of 40 CFR Part 60. |

[1]Except as allowed under 40 CFR § 60.56c(c) for HMIWI equipped with CEMS.
[2]Does not include CEMS and approved alternative non-EPA test methods allowed under 40 CFR § 60.56c(b).

**TABLE 45-18E**
**Increments of progress and compliance schedules for existing CISWI units**

| Comply with these increments of progress | By no later than[a] |
|---|---|
| Increment 1. -- The owner or operator of an existing CISWI unit shall submit a final control plan to the Secretary as expeditiously as practicable after approval of the West Virginia § 111(d)/129 plan. | February 7, 2016 |
| Increment 2. -- The owner or operator of an existing CISWI unit shall achieve final compliance as expeditiously as practicable after approval of the West Virginia § 111(d)/129 plan. | February 7, 2018, or three years after the effective date of West Virginia § 111(d)/129 plan approval.[b] |

[a] Site-specific schedules can be used at the discretion of the Secretary.
[b] The date can be no later than 3 years after the effective date of state plan approval or December 1, 2005 for CISWI units that commenced construction on or before November 30, 1999. The date can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018 for CISWI units that commenced construction on or before June 4, 2010.

**TABLE 45-18F**
**Emission limits for existing commercial and industrial solid waste incineration units that apply before February 7, 2018[b]**

| Air pollutant | Emission limit [a] | Averaging time | Performance test methods |
|---|---|---|---|
| Cadmium | 0.004 milligrams per dry standard cubic meter. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 29 of 40 CFR Part 60, Appendix A) |
| Carbon monoxide | 157 parts per million by dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 10, 10A, or 10B, of 40 CFR Part 60, Appendix A) |
| Dioxins/furans (toxic equivalency basis) | 0.41 nanograms per dry standard cubic meter. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 23 of 40 CFR Part 60, Appendix A) |
| Hydrogen chloride | 62 parts per million by dry volume. | 3-run average (For Method 26, collect a minimum volume of 120 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run). | Performance test (Method 26 or 26A of 40 CFR Part 60, Appendix A-8) |
| Lead | 0.04 milligrams per dry standard cubic meter. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 29 of 40 CFR Part 60, Appendix A) |
| Mercury | 0.47 milligrams per dry standard cubic meter. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 29 or 30B of 40 CFR Part 60, Appendix A-8) or ASTM D6784–02 (Reapproved 2008)[c] |
| Opacity | 10 percent | Three 1-hour blocks consisting of ten 6-minute average opacity values. | Performance test (Method 9 of 40 CFR Part 60, Appendix A-4) |
| Oxides of nitrogen | 388 parts per million by dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 7 or 7E of 40 CFR Part 60, Appendix A-4) |
| Particulate matter | 70 milligrams per dry standard cubic meter. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 5 or 29 of 40 CFR Part 60, Appendix A) |
| Sulfur dioxide | 20 parts per million by dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 6 or 6C of 40 CFR Part 60, Appendix A) |

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] Applies only to incinerators subject to the CISWI standards through a state plan prior to June 4, 2010. The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.
[c] Incorporated by reference, see 40 CFR § 60.17.

**TABLE 45-18G**
**Operating limits for wet scrubbers**

| For these operating parameters | You shall establish these operating limits | And monitor using these minimum frequencies | | |
|---|---|---|---|---|
| | | Data measurement | Data recording | Averaging time |
| Charge rate | Maximum charge rate | Continuous | Every hour | Daily (batch units).<br>3-hour rolling (continuous and intermittent units)[a] |
| Pressure drop across the wet scrubber or amperage to wet scrubber | Minimum pressure drop or amperage | Continuous | Every 15 minutes | 3-hour rolling[a] |
| Scrubber liquor flow rate | Minimum flow rate | Continuous | Every 15 minutes | 3-hour rolling[a] |
| Scrubber liquor pH | Minimum pH | Continuous | Every 15 minutes | 3-hour rolling[a] |

[a] Calculated each hour as the average of the previous 3 operating hours.

**TABLE 45-18H**
**Toxic equivalency factors**

| Dioxin/Furan isomer | Toxic equivalency factor |
|---|---|
| 2,3,7,8-tetrachlorinated dibenzo-p-dioxin | 1 |
| 1,2,3,7,8-pentachlorinated dibenzo-p-dioxin | 0.5 |
| 1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin | 0.1 |
| 1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin | 0.1 |
| 1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin | 0.1 |
| 1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin | 0.01 |
| octachlorinated dibenzo-p-dioxin | 0.001 |
| 2,3,7,8-tetrachlorinated dibenzofuran | 0.1 |
| 2,3,4,7,8-pentachlorinated dibenzofuran | 0.5 |
| 1,2,3,7,8-pentachlorinated dibenzofuran | 0.05 |
| 1,2,3,4,7,8-hexachlorinated dibenzofuran | 0.1 |
| 1,2,3,6,7,8-hexachlorinated dibenzofuran | 0.1 |
| 1,2,3,7,8,9-hexachlorinated dibenzofuran | 0.1 |
| 2,3,4,6,7,8-hexachlorinated dibenzofuran | 0.1 |
| 1,2,3,4,6,7,8-heptachlorinated dibenzofuran | 0.01 |
| 1,2,3,4,7,8,9-heptachlorinated dibenzofuran | 0.01 |
| octachlorinated dibenzofuran | 0.001 |

**TABLE 45-18I**
**Summary of reporting requirements for existing CISWI units[a]**

| Report | Due date | Contents | Reference |
|---|---|---|---|
| Waste Management Plan | No later than the date specified in Table 45-18E for submittal of the final control plan | Waste management plan. | subdivision 9.12.b |
| Initial Test Report | No later than 60 days following the initial performance test | Complete test report for the initial performance test.<br>The values for the site-specific operating limits.<br>Installation of bag leak detection systems for fabric filters. | subdivision 9.12.c |
| Annual Report | No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report. | Name and address.<br>Statement and signature by responsible official.<br>Date of report.<br>Values for the operating limits. Highest recorded 3-hour average and the lowest 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.<br>If a performance test was conducted during the reporting period, the results of the test. If a performance test was not conducted during the reporting period, a statement that the requirements of paragraph 9.9.z.1 were met.<br>Documentation of periods when all qualified CISWI unit operators were unavailable for more than 8 hours but less than 2 weeks.<br>If you are conducting performance tests once every 3 years consistent with paragraph 9.9.z.1, the date of the last 2 performance tests, a comparison of the emission level you achieved in the last 2 performance tests to the 75 percent emission limit threshold required in paragraph 9.9.z.1 and a statement as to whether there have been any operational changes since the last performance test that could increase emissions. | subdivisions 9.12.d and 9.12.e. |
| Emission Limitation or Operating Limit Deviation Report. | By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year. | Dates and times of deviation.<br>Averaged and recorded data for those dates.<br>Duration and causes of each deviation and the corrective actions taken.<br>Copy of operating limit monitoring data and any test reports.<br>Dates, times and causes for monitor downtime incidents. | subdivisions 9.12.f and 9.12.g. |
| Qualified Operator Deviation Notification | Within 10 days of deviation | Statement of cause of deviation.<br>Description of efforts to have an accessible qualified operator.<br>The date a qualified operator will be accessible. | paragraph 9.12.h.1 |
| Qualified Operator Deviation Status Report | Every 4 weeks following deviation | Description of efforts to have an accessible qualified operator.<br>The date a qualified operator will be accessible.<br>Request for approval to continue operation. | paragraph 9.12.h.2 |

| | | | |
|---|---|---|---|
| Qualified Operator Deviation | Notification of resumed operation prior to resuming operation | Notification that you are resuming operation. | paragraph 9.12.h.3 |

[a] This table is only a summary, see the referenced subdivisions and paragraphs for the complete requirements.

**TABLE 45-18J**
**Emission limits for existing commercial and industrial solid waste incineration units that apply after February 7, 2018[a]**

| Air pollutant | Emission limit[b] | Averaging time | Performance test methods |
|---|---|---|---|
| Cadmium | 0.0026 milligrams per dry standard cubic meter. | 3-run average (collect a minimum volume of 2 dry standard cubic meters). | Performance test (Method 29 of 40 CFR Part 60, Appendix A-8). Use ICPMS for the analytical finish. |
| Carbon monoxide | 17 parts per million by dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 10 at 40 CFR Part 60, Appendix A-4). |
| Dioxins/furans (total mass basis) | 4.6 nanograms per dry standard cubic meter. | 3-run average (collect a minimum volume of 2 dry standard cubic meters). | Performance test (Method 23 at 40 CFR Part 60, Appendix A-7). |
| Dioxins/furans (toxic equivalency basis) | 0.13 nanograms per dry standard cubic meter. | 3-run average (collect a minimum volume of 2 dry standard cubic meters). | Performance test (Method 23 of 40 CFR Part 60, Appendix A-7). |
| Hydrogen chloride | 29 parts per million by dry volume. | 3-run average (For Method 26, collect a minimum volume of 60 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run). | Performance test (Method 26 or 26A of 40 CFR Part 60, Appendix A-8). |
| Lead | 0.015 milligrams per dry standard cubic meter. [c] | 3-run average (collect a minimum volume of 2 dry standard cubic meters). | Performance test (Method 29 of 40 CFR Part 60, Appendix A-8). Use ICPMS for the analytical finish. |
| Mercury | 0.0048 milligrams per dry standard cubic meter. | 3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008) [d], collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR Part 60, Appendix A). | Performance test (Method 29 or 30B of 40 CFR Part 60, Appendix A-8) or ASTM D6784–02 (Reapproved 2008) [d]. |
| Oxides of nitrogen | 53 parts per million by dry volume. | 3-run average (for Method 7E, 1 hour minimum sample time per run). | Performance test (Method 7 or 7E of 40 CFR Part 60, Appendix A-4). |
| Particulate matter filterable | 34 milligrams per dry standard cubic meter. | 3-run average (collect a minimum volume of 1 dry standard cubic meter). | Performance test (Method 5 or 29 of 40 CFR Part 60, Appendix A-3 or Appendix A-8). |
| Sulfur dioxide | 11 parts per million by dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 6 or 6C of 40 CFR Part 60, Appendix A-4). |
| Fugitive ash | Visible emissions for no more than 5% of the hourly observation period. | Three 1-hour observation periods. | Visible emission test (Method 22 at 40 CFR Part 60, Appendix A-7). |

[a] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.
[b] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you shall meet either the total mass basis limit or the toxic equivalency basis limit.
[c] If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to subdivision 9.9.z if all of the other provisions of subdivision 9.9.z are met. For all other pollutants that do not contain a footnote "c", your performance tests for this pollutant for at least 2 consecutive years shall show that your emissions are at or below 75 percent of this limit in order to qualify for skip testing.
[d] Incorporated by reference, see 40 CFR § 60.17.

**TABLE 45-18K**
**Emission limits that apply to energy recovery units after February 7, 2018 [a]**

| Air pollutant | Emission limitation [b] | | Averaging time | Performance test methods |
|---|---|---|---|---|
| | Liquid/Gas | Solids | | |
| Cadmium | 0.023 milligrams per dry standard cubic meter. | Biomass - 0.0014 milligrams per dry standard cubic meter.[c] Coal - 0.0017 milligrams per dry standard cubic meter. | 3-run average (collect a minimum volume of 2 dry standard cubic meters). | Performance test (Method 29 of 40 CFR Part 60, Appendix A-8). Use ICPMS for the analytical finish. |
| Carbon monoxide | 35 parts per million by dry volume. | Biomass - 260 parts per million dry volume. Coal - 95 parts per million dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 10 at 40 CFR Part 60, Appendix A-4). |
| Dioxins/furans (total mass basis) | 2.9 nanograms per dry standard cubic meter. | Biomasss - 0.52 nanograms per dry standard cubic meter[c]. Coal - 5.1 nanograms per dry standard cubic meter. | 3-run average (collect a minimum volume of 4 dry standard cubic meters). | Performance test (Method 23 at 40 CFR Part 60, Appendix A-7). |
| Dioxins/furans (toxic equivalency basis) | 0.32 nanograms per dry standard cubic meter. | Biomass - 0.12 nanograms per dry standard cubic meter. Coal - 0.075 nanograms per dry standard cubic meter[c]. | 3-run average (collect a minimum volume of 4 dry standard cubic meters). | Performance test (Method 23 of 40 CFR Part 60, Appendix A-7). |
| Hydrogen chloride | 14 parts per million by dry volume. | Biomass- 0.20 parts per million dry volume. Coal - 58 parts per million dry volume. | 3-run average (for Method 26, collect a minimum of 120 liters; for Method 26A, collect a minimum volume of 1 dry standard cubic meter). | Performance test (Method 26 or 26A of 40 CFR Part 60, Appendix A-8). |
| Lead | 0.096 milligrams per dry standard cubic meter. | Biomass - 0.014 milligrams per dry standard cubic meter.[c] Coal - 0.057 milligrams per dry standard cubic meter.[c] | 3-run average (collect a minimum volume of 2 dry standard cubic meters). | Performance test (Method 29 of 40 CFR Part 60, Appendix A-8). Use ICPMS for the analytical finish. |

| | | | | |
|---|---|---|---|---|
| Mercury | 0.0024 milligrams per dry standard cubic meter. | Biomass- 0.0022 milligrams per dry standard cubic meter.<br>Coal - 0.013 milligrams per dry standard cubic meter. | 3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008)[d], collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR Part 60, Appendix A. | Performance test (Method 29 or 30B of 40 CFR Part 60, Appendix A-8) or ASTM D6784–02 (Reapproved 2008)[d]. |
| Oxides of nitrogen | 76 parts per million by dry volume. | Biomass - 290 parts per million dry volume.<br>Coal - 460 parts per million dry volume. | 3-run average (for Method 7E, 1 hour minimum sample time per run). | Performance test (Method 7 or 7E of 40 CFR Part 60, Appendix A-4). |
| Particulate matter filterable | 110 milligrams per dry standard cubic meter. | Biomass - 11 milligrams per dry standard cubic meter.<br>Coal - 130 milligrams per dry standard cubic meter. | 3-run average (collect a minimum volume of 1 dry standard cubic meter ). | Performance test (Method 5 or 29 of 40 CFR Part 60, Appendix A-3 or Appendix A-8) if the unit has an annual average heat input rate less than or equal to 250 MMBtu/hr, or PM CPMS (as specified in subdivision 9.9.x) if the unit has an annual average heat input rate greater than 250 MMBtu/hr. |
| Sulfur dioxide | 720 parts per million by dry volume. | Biomass - 7.3 parts per million dry volume.<br>Coal - 850 parts per million dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 6 or 6C of 40 CFR Part 60, Appendix A-4). |
| Fugitive ash | Visible emissions for no more than 5% of the hourly observation period. | Visible emissions for no more than 5% of the hourly observation period. | Three 1-hour observation periods. | Visible emission test (Method 22 at 40 CFR Part 60, Appendix A-7). |

[a] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.

[b] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you shall meet either the total mass basis limit or the toxic equivalency basis limit.

[c] If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to subdivision 9.9.z if all of the other provision of subdivision 9.9.z are met. For all other pollutants that do not contain a superscript "c", your performance tests for this pollutant for at least 2 consecutive years shall show that your emissions are at or 75 percent of this limit in order to qualify for skip testing, with the exception of annual performance tests to certify a CEMS or PM CPMS.

[d] Incorporated by reference, see 40 CFR § 60.17.

**TABLE 45-18L**
**Emission limits that apply to waste-burning kilns after February 7, 2018[a]**

| Air pollutant | Emission limit[b] | Averaging time | Performance test methods[d] |
|---|---|---|---|
| Cadmium | 0.0014 milligrams per dry standard cubic meter.[c] | 3-run average (collect a minimum volume of 2 dry standard cubic meters). | Performance test (Method 29 of 40 CFR Part 60, Appendix A-8). |
| Carbon monoxide | 110 (long kilns)/ 790 (preheater-precalciner) parts per million dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 10 at 40 CFR Part 60, Appendix A-4). |
| Dioxins/furans (total mass basis) | 1.3 nanograms per dry standard cubic meter. | 3-run average (collect a minimum volume of 4 dry standard cubic meters). | Performance test (Method 23 at 40 CFR Part 60, Appendix A-7). |
| Dioxins/furans (toxic equivalency basis) | 0.075 nanograms per dry standard cubic meter.[c] | 3-run average (collect a minimum volume of 4 dry standard cubic meters). | Performance test (Method 23 of 40 CFR Part 60, Appendix A-7). |
| Hydrogen chloride | 3.0 parts per million dry volume.[c] | 3-run average (collect a minimum volume of 1 dry standard cubic meter) or 30-day rolling average if HCL CEMS is being used. | Performance test (Method 321 at 40 CFR Part 63, Appendix A) or HCL CEMS if a wet scrubber or dry scrubber is not used, as specified in subdivision 9.9.j. |
| Lead | 0.014 milligrams per dry standard cubic meter.[c] | 3-run average (collect a minimum volume of 2 dry standard cubic meters). | Performance test (Method 29 of 40 CFR Part 60, Appendix A-8). |
| Mercury | 0.011 milligrams per dry standard cubic meter. | 30-day rolling average. | Mercury CEMS or sorbent trap monitoring system (Performance Specification 12A or 12B, respectively, of Appendix B of 40 CFR Part 60.) |
| Oxides of nitrogen | 630 parts per million by dry volume. | 3-run average (for Method 7E, 1 hour minimum sample time per run). | Performance test (Method 7 or 7E of 40 CFR Part 60, Appendix A-4). |
| Particulate matter filterable | 13.5 milligrams per dry standard cubic meter. | 30-day rolling average. | PM CPMS as specified in subdivision 9.9.x). |
| Sulfur dioxide | 600 parts per million by dry volume. | 3-run average (for Method 6, collect a minimum of 20 liters, for Method 6C, 1 hour minimum sample time per run). | Performance test (Method 6 or 6C of 40 CFR Part 60, Appendix A-4). |

[a] The date specified in the Sate Plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.
[b] All emission limitations are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you shall meet either the total mass basis limit or the toxic equivalency basis limit.
[c] If you are conducting stack tests to demonstrate compliance and your performance tests for this pollutant for at least 2 consecutive years show that your emissions are at or below this limit, you can skip testing according to subdivision 9.9.z if all of the other provision of subdivision 9.9.z are met. For all other pollutants that do not contain a superscript "c", your performance tests for this pollutant for at least 2 consecutive years shall show that your emissions are at or 75 percent of this limit in order to qualify for skip testing, with the

exception of annual performance tests to certify a CEMS or PM CPMS.

[d] Alkali bypass and in-line coal mill stacks are subject to performance testing only, as specified in paragraph 9.y.3. They are not subject to the CEMS, sorbent trap or CPMS requirements that otherwise may apply to the main kiln exhaust.

**TABLE 45-18M**
**Emission limits that apply to small, remote incinerators after February 7, 2018[a]**

| Air pollutant | Emission limit[b] | Averaging time | Performance test methods |
|---|---|---|---|
| Cadmium | 0.95 milligrams per dry standard cubic meter. | 3-run average (collect a minimum volume of 1 dry standard cubic meter). | Performance test (Method 29 of 40 CFR Part 60, Appendix A-8). |
| Carbon monoxide | 64 parts per million dry volume. | 3-run average (1 hour minimum sample time per run). | Performance test (Method 10 at 40 CFR Part 60, Appendix A-4). |
| Dioxins/furans (total mass basis) | 4400 nanograms per dry standard cubic meter. | 3-run average (collect a minimum volume of 1 dry standard cubic meter). | Performance test (Method 23 at 40 CFR Part 60, Appendix A-7). |
| Dioxins/furans (toxic equivalency basis) | 180 nanograms per dry standard cubic meter. | 3-run average (collect a minimum volume of 1 dry standard cubic meter). | Performance test (Method 23 of 40 CFR Part 60, Appendix A-7). |
| Fugitive ash | Visible emissions for no more than 5% of the hourly observation period. | Three 1-hour observation periods. | Visible emission test (Method 22 at 40 CFR Part 60, Appendix A-7). |
| Hydrogen chloride | 300 parts per million dry volume. | 3-run average (For Method 26, collect a minimum volume of 120 liters per run. For Method 26A, collect a minimum volume of 1 dry standard cubic meter per run). | Performance test (Method 26 or 26A at 40 CFR Part 60, Appendix A-8). |
| Lead | 2.1 milligrams per dry standard cubic meter. | 3-run average (collect a minimum volume of 1 dry standard cubic meter). | Performance test (Method 29 of 40 CFR Part 60, Appendix A-8). Use ICPMS for the analytical finish. |
| Mercury | 0.0053 milligrams per dry standard cubic meter. | 3-run average (For Method 29 and ASTM D6784–02 (Reapproved 2008)[c], collect a minimum volume of 2 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR Part 60, Appendix A). | Performance test (Method 29 or 30B at 40 CFR Part 60, Appendix A–8) or ASTM D6784-02 (Reapproved 2008).[c] |
| Oxides of nitrogen | 190 parts per million by dry volume. | 3-run average (for Method 7E, 1 hour minimum sample time per run). | Performance test (Method 7 or 7E of 40 CFR Part 60, Appendix A-4). |
| Particulate matter (filterable) | 270 milligrams per dry standard cubic meter. | 3-run average (collect a minimum volume of 1 dry standard cubic meter). | Performance test (Method 5 or 29 at 40 CFR Part 60, Appendix A-3 or Appendix A-8). |

| | | | |
|---|---|---|---|
| Sulfur dioxide | 150 parts per million dry volume. | 3-run average (for Method 6, collect a minimum of 20 liters per run; for Method 6C, 1 hour minimum sample time per run). | Performance test (Method 6 or 6C of 40 CFR Part 60, Appendix A-4). |

[a] The date specified in the state plan can be no later than 3 years after the effective date of approval of a revised state plan or February 7, 2018.
[b] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions. For dioxins/furans, you shall meet either the total mass basis limit or the toxic equivalency basis limit.
[c] Incorporated by reference, see 40 CFR § 60.17.

# APPENDIX B
# PUBLIC PARTICIPATION

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**Proposed Revision to the West Virginia Section 111(d)/129 Plan**
**Control of Air Pollution from Combustion of Solid Waste for**
**Commercial and Industrial Solid Waste Incineration (CISWI) Units**

**Notice of Public Hearing and Public Comment Period**

The West Virginia Department of Environmental Protection (DEP), Division of Air Quality (DAQ) is revising the Section 111(d)/129 Plan for the Control of Air Pollution from Combustion of Solid Waste for Commercial and Industrial Solid Waste Incineration (CISWI) Units. This plan revision incorporates changes made to rule 45 C.S.R. 18 - "Control of Air Pollution from Combustion of Solid Waste". This rule change requires DAQ to submit a State Plan revision for CISWI, and conduct a public hearing.

DAQ will hold a public hearing on Tuesday, July 24, 2018 beginning at 5:30 p.m. on a proposed revised State Plan to implement Emission Guidelines for CISWI.

The public hearing is being held to satisfy the requirements for submitting a revised 111(d)/129 State Plan. The revised plan will be submitted to the United States Environmental Protection Agency (USEPA) and supplemented by legislative rule 45 C.S.R. 18 - "Control of Air Pollution from Combustion of Solid Waste," which became effective June 1, 2018. This rule gives West Virginia regulatory authority to adopt, implement and enforce the Emission Guidelines requirements for existing CISWI and the New Source Performance Standards for new facilities, either directly through administrative action requiring compliance with 45 C.S.R. 18, or by including such requirements in State permits, where applicable.

The public hearing will be held in the Dolly Sods conference room #1125, at the DEP Charleston headquarters located at 601 57th Street SE, Charleston, West Virginia 25304. Written and oral comments will be accepted until the close of the hearing on July 24, 2018. Comments will also be accepted by e-mail if transmitted by 5:30 p.m. on July 24, 2018 to richard.a.boehm@wv.gov . Written comments may also be submitted at the following address:

William F. Durham, Director
Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Comments submitted by mail must be postmarked by July 24, 2018. Copies of the proposed revised State Plan will be available for public review on or before July 24, 2018, at the Department of Environmental Protection, Division of Air Quality's Charleston office at the above address, or on the website at http://www.dep.wv.gov/daq/publicnoticeandcomment/Pages/default.aspx. Appendices to the Plan will be available upon request.

west virginia department of environmental protection

Division of Air Quality
601 57th Street, SE
Charleston, WV 25304

Austin Caperton, Cabinet Secretary
dep.wv.gov

June 15, 2018

Ms. Cristina Fernandez, Director
Air Protection Division
U.S. EPA, Region 3
1650 Arch Street (3AP00)
Philadelphia, PA 19103-2029

Re: West Virginia Revised CAA § 111(d)/129 Plan for Commercial and Industrial Solid Waste Incineration Units (CISWI)

Dear Ms. Fernandez:

I am herein submitting the above-referenced proposed revision to the West Virginia § 111(d)/129 Plan for review and comment by the U. S. Environmental Protection Agency. WV state rule 45 C.S.R. 18, *Control of Air Pollution from Combustion of Solid Waste*, effective June 1, 2018, was revised in response to amendments to the CISWI Emission Guidelines under 40 C.F.R. 60, Subpart DDDD, *Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units* and to the corresponding New Source Performance Standards under 40 C.F.R. 60, Subpart CCCC, *Standards of Performance for Commercial and Industrial Solid Waste Incineration Units*.

The general public comment period begins on June 22, 2018. The DAQ will accept written comments on the proposed state plan revision until July 24, 2018. In addition, the agency will receive oral and written comments at a public hearing to be held on July 24, 2018 at 6:00 p.m. as detailed in the notice.

Please submit any written comments to my attention at the above address, or feel free to call me with any questions regarding this matter at (304) 926-0462.

Sincerely,

William F. Durham
Director

WFD/lmj
Enclosures

cc: Rich Boehm, DAQ
Mike Gordon, USEPA/3AP10
Laura Jennings, DAQ

# APPENDIX C

# W. Va. State Code

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# W. Va. Code § 22-5-1 et seq.

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CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 5. AIR POLLUTION CONTROL.

**§22-5-1. Declaration of policy and purpose.**

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; to assure the economic competitiveness of the state by providing for the timely processing of permit applications and other authorizations under this article; and to provide a framework within which all values may be balanced in the public interest.

Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the Federal Clean Air Act, as amended.

**§22-5-2. Definitions.**

The terms used in this article are defined as follows:

(1) "Air pollutants" means solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

(2) "Board" means the air quality board continued pursuant to the provisions of article two, chapter twenty-two-b of this code.

(3) "Director" means the director of the Division of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one, chapter twenty-two of this code.

(4) "Discharge" means any release, escape or emission of air pollutants into the air.

(5) "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

(6) "Statutory air pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

**§22-5-3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.**

It is unlawful for any person to cause a statutory air pollution, to violate the provisions of this article, to violate any rules promulgated pursuant to this article to operate any facility subject to the permit requirements of the director without a valid permit, or to knowingly misrepresent to any person in the State of West Virginia that the sale of air pollution control equipment will meet the standards of this article or any rules promulgated pursuant to this article. Nothing contained in this article provides any person with a legal remedy or basis for damages or other relief not otherwise available to such person immediately prior to enactment of this article.

**§22-5-4. Powers and duties of director; and legal services; rules.**

(a) The director is authorized:

(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the director may deem advisable and necessary;

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: *Provided,* That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: *Provided, however,* That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof;

(5) To enter orders requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purpose of this article;

(9) To enter and inspect any property, premise or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules promulgated under the provisions of this article. No person shall refuse entry or access to any authorized representative of the director who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: *Provided,*That nothing contained in this article eliminates any obligation to follow any process that may be required by law;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources; and the director may cooperate with any public or private agency or person and receive therefrom and on behalf of the state gifts, donations, and contributions, which shall be deposited to the credit of the "Air Pollution Education and Environment Fund" which is hereby continued in the state Treasury. The moneys collected pursuant to this article which are directed to be deposited in the air pollution education and environment fund must be deposited in a separate account in the state Treasury and expenditures for purposes set forth in this article are not authorized from collection but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds

needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as he or she may determine. The members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the director about all matters pertaining to the regulation, control and abatement of air pollution within such area;

(14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the director such information as the director may require in a form or manner prescribed by him or her for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe;

(15) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the director;

(16) To do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the "Federal Clean Air Act," as amended:*Provided,* That in preparing and submitting each such plan the director shall establish in such plan that such standard shall be first achieved, maintained and enforced by limiting and controlling emissions of pollutants from commercial and industrial sources and locations and shall only provide in such plans for limiting and controlling emissions of pollutants from private dwellings and the curtilage thereof as a last resort: *Provided, however,* That nothing herein contained affects plans for achievement, maintenance and enforcement of motor vehicle emission standards and of standards for fuels used in dwellings;

(17) To promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, providing for the following:

(A) Procedures and requirements for permit applications, transfers and modifications and the review thereof;

(B) Imposition of permit application and transfer fees;

(C) Establishment of criteria for construction, modification, relocation and operating permits;

(D) Imposition of permit fees and of certificate fees: *Provided,* That any person subject to operating permit fees pursuant to section twelve of this article is exempt from imposition of the certificate fee; and

(E) Imposition of penalties and interest for the nonpayment of fees.

The fees, penalties and interest shall be deposited in a special account in the state Treasury designated the "Air Pollution Control Fund", formerly the "Air Pollution Control Commission Fund", which is hereby continued to be appropriated for the sole purpose of paying salaries and expenses of the board, the office of air quality and their employees to carry out the provisions of this article: *Provided,* That the fees, penalties and interest collected for operating permits required by section twelve of this article shall be expended solely to cover all reasonable direct and indirect costs required to administer the operating permit program. The fees collected pursuant to this subdivision must be deposited in a separate account in the state Treasury and expenditures for purposes set forth in this article are not authorized from collections but are to be made only in

accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature: *Provided, however,* That for fiscal year one thousand nine hundred ninety-three, expenditures are permitted from collections without appropriation by the Legislature; and

(18) Receipt of any money by the director as a result of the entry of any consent order shall be deposited in the state Treasury to the credit of the air pollution education and environment fund.

(b) The Attorney General and his or her assistants and the prosecuting attorneys of the several counties shall render to the director without additional compensation such legal services as the director may require of them to enforce the provisions of this article.

**§22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocatio appeals to board.**

If, from any investigation made by the director or from any complaint filed with him or her, the director is of the opinion that a person is violating the provisions of this article, or any rules promulgated pursuant thereto, he or she shall make and enter an order directing the person to cease and desist the activity, unless the director determines the violation is of a minor nature or the violation has been abated. The director shall fix a reasonable time in such order by which the activity must stop or be prevented. The order shall contain the findings of fact upon which the director determined to make and enter the order.

If, after any investigation made by the director, or from any complaint filed with him or her, the director is of the opinion that a permit holder is violating the provisions of this article, or any rules promulgated pursuant thereto, or any order of the director, or any provision of a permit, the director may issue notice of intent to suspend, modify or revoke and reissue such permit. Upon notice of the director's intent to suspend, modify or revoke a permit, the permit holder may request a conference with the director to show cause why the permit should not be suspended, modified or revoked. The request for conference must be received by the director within fifteen days following receipt of notice. After conference or fifteen days after issuance of notice of intent, if no conference is requested, the director may enter an order suspending, modifying or revoking the permit and send notice to the permit holder. Such order is a cease and desist order for purposes of administrative and judicial review and shall contain findings of fact upon which the director determined to make and enter the order. If an appeal of the director's order is filed, the order of the director shall be stayed from the date of issuance pending a final decision of the board.

The director shall cause a copy of any such order to be served upon the person by registered or certified mail or by any proper law-enforcement officer.

Any person upon whom a copy of the final order has been served may appeal such order to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

**§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.**

(a) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is subject to a civil penalty not to exceed $10,000 for each day of such violation, which penalty shall be recovered in a civil action brought by the director in the name of the State of West Virginia in the circuit court of any county wherein the person resides or is engaged in the activity complained of or in the circuit court of Kanawha County. The amount of the penalty shall be fixed by the court without a jury:*Provided,* That any person is not subject

to civil penalties unless the person has been given written notice thereof by the director: *Provided, however,* That for the first such minor violation, if the person corrects the violation within the time as was specified in the notice of violation issued by the director, no civil penalty may be recovered: *Provided further,* That if the person fails to correct a minor violation or for any serious or subsequent serious or minor violation, the person is subject to civil penalties imposed pursuant to this section from the first day of the violation notwithstanding the date of the issuance or receipt of the notice of violation. The director shall, by rule subject to the provisions of chapter twenty-nine-a of this code, determine the definitions of serious and minor violations. The amount of any penalty collected by the director shall be deposited in the general revenue of the state Treasury according to law.

(b)(1) Any person who knowingly misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 or imprisoned in the county jail not more than six months or both fined and imprisoned: *Provided,* That if the violation occurs on separate days or is continuing in nature, the fine shall be no more than $25,000 for each day of such violation.

(2) Any person who knowingly violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 for each day of such violation or imprisoned in the county jail not more than one year or both fined and imprisoned.

(c) Upon a request in writing from the director it is the duty of the Attorney General and the prosecuting attorney of the county in which any such action for penalties accruing under this section or section seven of this article may be brought to institute and prosecute all such actions on behalf of the director.

(d) For the purpose of this section, violations on separate days are separate offenses.

**§22-5-7. Applications for injunctive relief.**

The director may seek an injunction against any person in violation of any provision of this article or any permit, rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief brought under this section or for civil penalty brought under section six of this article may be filed and relief granted notwithstanding the fact that all administrative remedies provided in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

In any action brought pursuant to the provisions of section six or of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

**§22-5-8. Emergencies.**

Whenever air pollution conditions in any area of the state become such as, in the opinion of the director, to create an emergency and to require immediate action for the protection of the public health, the director may, with the written approval of the Governor, so find and enter such order as it deems necessary to reduce or prevent the emission of air pollutants substantially contributing to such conditions. In any such order the director shall also fix a time, not later than twenty-four hours thereafter, and place for a hearing to be held before it for the purpose of investigating and determining the factors causing or

contributing to such conditions. A true copy of any such order shall be served upon persons whose interests are directly prejudiced thereby in the same manner as a summons in a civil action may be served, and a true copy of such order shall also be posted on the front door of the courthouse of the county in which the alleged conditions originated. All persons whose interests are prejudiced or affected in any manner by any such order shall have the right to appear in person or by counsel at the hearing and to present evidence relevant to the subject of the hearing. Within twenty-four hours after completion of the hearing the director shall affirm, modify or set aside said order in accordance and consistent with the evidence adduced. Any person aggrieved by such action of the director may thereafter apply by petition to the circuit court of the county for a review of the director's action. The circuit court shall forthwith fix a time for hearing de novo upon the petition and shall, after such hearing, by order entered of record, affirm, modify or set aside, in whole or in part, the order and action of the director. Any person whose interests shall have been substantially affected by the final order of the circuit court may appeal the same to the Supreme Court of Appeals in the manner prescribed by law.

**§22-5-9. Powers reserved to secretary of the Department of Health and Human Resources, Commissioner of Bur for Public Health, local health boards and political subdivisions; conflicting statutes repealed.**

Nothing in this article affects or limits the powers or duties heretofore conferred by the provisions of chapter sixteen of this code upon the the Secretary of the Department of Health and Human Resources, the Commissioner of the Bureau for Public Health, county health boards, county health officers, municipal health boards, municipal health officers, combined boards of health or any other health agency or political subdivision of this state except insofar as such powers and duties might otherwise apply to the control, reduction or abatement of air pollution. All existing statutes or parts of statutes are, to the extent of their inconsistencies with the provisions of this article and to the extent that they might otherwise apply to the control, reduction or abatement of air pollution, hereby repealed: *Provided,* That no ordinance previously adopted by any municipality relating to the control, reduction or abatement of air pollution is repealed by this article.

**§22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.**

(a) All air quality data, emission data, permits, compliance schedules, orders of the director, board orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as "records, reports, data or information") obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of the person, the director shall consider these records, reports, data or information or a particular portion thereof confidential: *Provided,* That this confidentiality does not apply to the types and amounts of air pollutants discharged and that these records, reports, data or information may be disclosed to other officers, employees or authorized representatives of the state or of the federal environmental protection agency concerned with enforcing this article, the federal Clean Air Act, as amended, or the federal Resource Conservation and Recovery Act, as amended, when relevant to any official proceedings thereunder: *Provided, however,* That the officers, employees or authorized representatives of the state or federal environmental protection agency protect these records, reports, data or information to the same degree required of the director by this section. The director shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section.

(b) Upon receipt of a request for records, reports, data or information which constitute trade secrets and prior to making a final determination to grant or deny the request, the director shall notify the person claiming that any record, report, data or information is entitled to protection as a trade secret, and allow the person an opportunity to respond to the request in writing.

(c) All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of a request, the director or his or her designate shall by order: (1) Advise the person making the request of the time and place at which the person may inspect and copy the documents, which, if the request addresses information claimed as confidential, may not be sooner than thirty days following the date of the determination to disclose, unless an earlier disclosure date is agreed to by the person claiming the confidentiality; or (2) deny the request, stating in writing the reasons for denial. If the request addresses information claimed as confidential, notice of the action taken pursuant to this subsection shall also be provided to the person asserting the claim of confidentiality.

Any person adversely affected by a determination, by order or otherwise, regarding information confidentiality under this article may appeal the determination to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code. The filing of a timely notice of appeal shall stay any determination, by order or otherwise, to disclose confidential information pending a final decision on the appeal. The scope of review is limited to the question of whether the records, reports, data or other information, or any particular part thereof sought to be inspected or copied, are entitled to be treated as confidential under subsection (a) of this section. The air quality board shall afford evidentiary protection in appeals as is necessary to protect the confidentiality of the information at issue, including the use of in camera proceedings and the sealing of records where appropriate.

(d) In lieu of the provision of chapter twenty-nine-b of this code, the provision of this section shall apply to determinations of confidentiality.

**§22-5-11. Construction, modification or relocation permits required for stationary sources of air pollutants.**

(a) Unless otherwise specifically provided in this article, no person shall construct, modify or relocate any stationary source of air pollutants without first obtaining a construction, modification or relocation permit as provided in this article.

(b) The secretary shall by rule specify the class or categories of stationary sources to which this section applies. Application for permits shall be made upon such form, in such manner, and within such time as the rule prescribes and shall include such information, as in the judgment of the secretary, will enable him or her to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules of the secretary.

(c) Unless otherwise specifically provided in this article, the secretary shall issue a permit for a major stationary source within a reasonable time not to exceed three hundred sixty-five calendar days, after the secretary determines that the application is complete.

(d) Unless otherwise specifically provided in this article, the secretary shall issue a permit for all other sources including modifications of existing major stationary sources which are not major modifications within a reasonable time not to exceed ninety calendar days, after the date the secretary determines the application is complete. The Secretary may extend this time by thirty calendar days to allow for public comment.

(e) A permit application will be denied if the secretary determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated thereunder.

(f) For purposes of this section, a modification is any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant discharged by a source above the de minimis level set by the secretary.

(g) With respect to the construction of new nonmajor stationary sources, or modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, or relocations of nonmajor stationary sources, the following requirements apply:

(1) The secretary shall issue an administrative update to a permit issued under this section with respect to any of these sources, unless he or she determines that the proposed administrative update will not be in accordance with this article or rules promulgated hereunder, in which case the secretary shall issue an order denying the administrative update. Any administrative update shall be issued by the secretary within a reasonable time not to exceed sixty calendar days after receipt of a complete application. Administrative updates are minor revisions of existing permits as further described and authorized by rule.

(2) The secretary shall, within a reasonable time not to exceed forty-five calendar days after the date the secretary determines that an application is complete, issue a registration under a general permit applicable to any of these sources, unless he or she determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated hereunder. General permits are permits authorizing the construction, modification or relocation of a category of sources by the same owner or operator or involving the same or similar processes or pollutants upon the terms and conditions specified in the general permit for those types of sources.

(3) The secretary shall, within a reasonable time not to exceed forty-five calendar days after receipt of a complete application, issue a temporary permit or a relocation permit, unless he or she determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated hereunder. Temporary permits are permits authorizing the owner or operator to make limited changes for limited periods of time as further described and authorized by rule.

(h) The secretary shall determine whether an application filed under this section is complete within thirty calendar days after receipt of that application at which time the secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

(i) The secretary, shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty nine-a of this code, to implement the provisions of this section by August 1, 2008.

**§22-5-11a. Activities authorized in advance of permit issuance.**

(a) With respect to the modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, the following activities are authorized in advance of permit issuance. Any authorized activities undertaken by or on behalf of the permit applicant prior to the issuance of a final permitting action by the secretary are undertaken at the permit applicant's own risk and with the knowledge that the application for a permit or permit modification may be denied:

(1) Receiving or storing on-site or off-site any equipment or supplies which make up in part or in whole an emission unit or any support equipment, facilities, building or structure.

(2) A person who holds an active West Virginia air quality permit issued under this article at an existing source, and who has applied to the secretary for permission to alter, expand or modify that source or to allow a new emissions unit at that source, may begin the construction of any such alteration, expansion, modification or new emission unit in advance of permit issuance in accordance with this section. The person may not operate any altered, expanded, modified or new emission unit without first obtaining an air quality permit as required by rules promulgated by the secretary.

(3) The following sources are ineligible for submission of an application for permission to commence construction in advance of permit issuance:

(A) Sources subject to the "Federal Clean Air Act" subsections 112(g) or 112(j).

(B) Sources seeking federally enforceable permit conditions in order to avoid otherwise applicable standards;

(C) Sources requiring a specific case-by-case emission limitation or standard under 45CSR21 or 45CSR27.

(4)(A) To qualify for the authorization to construct in advance of permit issuance as provided in this section, the permittee shall submit to the secretary an application for permission to commence construction in advance of permit issuance.

(B) Such application for permission to commence construction shall include all of the following:

(1) The name and location of the source and the name and address of the permittee;

(2) The permit number of each active permit issued under this article for such source;

(3) The nature of the sources and equipment associated with

such alteration, expansion, modification or new emission unit;

(4) An estimate of the maximum hourly and annual emissions of regulated air pollutants increased as a result of such alteration, expansion, modification or new emission unit;

(5) The air pollution control devices or methods that are to be employed in connection with the alteration, expansion, modification or new emission unit;

(6) A listing of the applicable state and federal air quality regulatory requirements for alteration, expansion, modification or new emission unit, and sufficient information which, in the judgement of the secretary, will demonstrate compliance with any applicable state and federal air quality regulatory requirements;

(7) The anticipated construction or building schedule for alteration, expansion, modification or new emission unit;

(8) A certification signed by the responsible official that the source, equipment and devices that are subject to a request for construction authorization will not be operated until the permittee has obtained a permit under rules promulgated by the secretary;

(9) A certification by the responsible official that any construction undertaken prior to the issuance of a final permit under rules of the secretary is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a permit or permit modification without regard to the permittee's financial investment or addition to or modification of the source;

(10) A certification signed by the responsible official that all of the information contained in the application is complete and accurate to the best of the responsible official's knowledge and ability; and

(11) Upon submission of the application for permission to construct, the applicant shall give notice by publishing a Class I legal advertisement of the applicant's intent to alter or expand the physical arrangement or operation of an existing stationary source and the opportunity to provide written comment to the secretary within thirty calendar days of the publication. The applicant shall post a visible and accessible sign, at a minimum 2 feet square, at the entrance to the source or proposed

site. The sign must be clearly marked indicating that an air quality permit has been applied for and include the West Virginia Division of Air Quality permitting section telephone number and web site for additional information. The applicant must post the sign for the duration of the public notice period. Public notice shall be in a newspaper having general circulation in the county or counties where the facility is located. The notice shall contain the information required by rules promulgated by the secretary. Within fifteen days of completion of the public comment period, the secretary shall consider and respond to all written comments. If the secretary finds that concerns raised by the public comment period give rise to issues or concerns that would cause a construction or operational permit not to be issued, the secretary may issue a revocation or stay of the authorization to construct until those issues or concerns are resolved.

(c) The secretary shall determine whether an application for permission to commence construction in advance of permit issuance is complete within fifteen calendar days after receipt of the application at which time the secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

(d) Within fifteen calendar days after the secretary has made a determination that an application for permission to commence construction in advance of permit issuance is complete, unless the secretary for good cause shown, extends the fifteen day time period for up to an additional fifteen calendar days, the secretary shall notify the applicant in writing of his or her determination as to whether each of the following conditions has or has not been satisfied:

(1) The applicant is and has been for a period of at least three years in substantial compliance with all other active permits and applicable state and federal air quality regulatory requirements under this article;

(2) The applicant has demonstrated that the alteration, expansion, modification or new emission unit will be in compliance with all applicable state and federal air quality regulatory requirements;

(3) The alteration, expansion, modification or new emission unit will not interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment or be inconsistent with the intent and purpose of this article;

(4) The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted;

(5) The alteration or expansion will not result in a disproportionate increase in size of the facility already permitted; and

(6) The alteration or expansion will result in the same or substantially similar emissions as the facility already permitted.

If the secretary finds that all of the conditions have been satisfied, the notice issued by the secretary shall state that construction of the alteration, expansion, modification or new emission unit in advance of permit issuance may begin immediately. If the secretary finds that one or more of the conditions has not been met, the notice shall state that the requested construction, alteration, expansion, modification or new emission unit may not begin prior to issuance of a new or modified permit.

(e) If at any time during the construction of such alteration, expansion, modification or new emission unit, the secretary determines that the source is not likely to qualify for a permit or permit modification under applicable rules, the secretary may order that construction cease until the secretary makes a decision on the application for a permit or permit modification. If the secretary orders that construction cease, then construction of the alteration, expansion, modification or new emission unit may resume only if the secretary either makes a subsequent written determination that the circumstances that resulted in such

order have been adequately addressed or if the secretary issues a permit or permit modification under the rules that authorize construction to resume.

(f) The secretary shall evaluate an application for a permit or permit modification under the rules and make a decision on the same basis as if the construction of the alteration, expansion, modification or new emission unit in advance of permit issuance had not been authorized pursuant to this section. No evidence regarding any contract entered into, financial investment made, construction undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under this article is admissible in any contested case or judicial proceeding involving any permit required under the rules. No evidence as to any determination or order by the secretary pursuant to this section shall be admissible in any contested case or judicial proceeding related to any permit required under this article.

(g) Any permittee who proceeds under this section shall be precluded from bringing any action, suit or proceeding against the state, the officials, agents, and employees of the state or the secretary for any loss resulting from any contract entered into, financial investment made, construction undertaken, or economic loss incurred by the permittee in reliance upon the provisions of this section.

(h) This section does not relieve any person of the obligation to comply with any other requirement of state law, including any requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of the site or the alteration or expansion of the physical arrangement or method of operation of a source at a facility for which a permit is required under the rules.

(i) This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any state implementation plan, or federally approved requirement under the Title V permitting program, as determined solely by the secretary. This section does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the secretary. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any state implementation plan, or federally approved requirement under the Title V permitting program, as determined solely by the secretary.

(j) A permittee who submits an application to commence construction in advance of permit issuance under this section shall pay to the department a fee of $200 for each application submitted to cover a portion of the administrative costs of implementing this section.

(k) The secretary, in accordance with chapter twenty-nine-a of this code, shall propose legislative rule that may be necessary to implement the provisions of this section by August 1, 2008.

(l) The secretary is directed to report back to the Joint Committee on Government and Finance by January 1, 2010, on the impact of the implementation of the expedited permits authorized pursuant to this section. The report shall include, but not be limited to, assessments regarding the number and types of facilities utilizing this section, whether the agency has found this expedited process has assisted these facilities to implement construction and make revisions to their operations efficiently, without adverse impacts on the agency, the permitting process, or statewide air quality.

**§22-5-12. Operating permits required for stationary sources of air pollution.**

No person may operate a stationary source of air pollutants without first obtaining an operating permit as provided in this section. The director shall promulgate legislative rules, in accordance with chapter twenty-nine-a of this code, which

specify classes or categories of stationary sources which are required to obtain an operating permit. The legislative rule shall provide for the form and content of the application procedure including time limitations for obtaining the required permits. Any person who has filed a timely and complete application for a permit or renewal thereof required by this section, and who is abiding by the requirements of this article and the rules promulgated pursuant thereto is in compliance with the requirements of this article and any rule promulgated thereunder until a permit is issued or denied. Any legislative rule promulgated pursuant to the authority granted by this section shall be equivalent to and consistent with rules and regulations adopted by the administrator of United States environmental protection agency pursuant to Title IV and Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7651*et seq*. and 42 U.S.C. §7661 *et seq*., respectively: *Provided,* That such legislative rule may deviate from the federal rules and regulations where a deviation is appropriate to implement the policy and purpose of this article taking into account such factors unique to West Virginia.

**§22-5-13. Consolidation of permits.**

For permits required by sections eleven and twelve of this article, the director may incorporate the required permits with an existing permit or consolidate the required permits into a single permit.

**§22-5-14. Administrative review of permit actions.**

Any person whose interest may be affected, including, but not necessarily limited to, the applicant and any person who participated in the public comment process, by a permit issued, modified or denied by the secretary, or construction authorization pursuant to section eleven-a of this article, may appeal such action of the secretary to the air quality board pursuant to article one, chapter twenty-two-b of this code.

**§22-5-15. Motor vehicle pollution, inspection and maintenance.**

(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate and in furtherance of the purposes of this article, the director may provide by legislative rule for the control of emissions from motor vehicles. The legislative rule may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any legislative rule pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The director shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law or legislative rule, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle required by rules of the director to be maintained in or on the vehicle. Any such failure to maintain in good working order or removal, dismantling or causing of inoperability subjects the owner or operator to suspension or cancellation of the registration for the vehicle by the Department of Transportation, Division of Motor Vehicles. The vehicle is not thereafter eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(c) The Department of Transportation, Division of Motor Vehicles, Department of Administration, information and communication services division and the State Police shall make available technical information and records to the director to implement the legislative rule regarding motor vehicle pollution, inspection and maintenance. The director may promulgate a

legislative rule establishing motor vehicle pollution, inspection and maintenance standards and imposing an inspection fee at a rate sufficient to implement the motor vehicle inspection program and shall do so when required pursuant to federal law regarding attainment of ambient air quality standards.

(d) The director may promulgate a legislative rule requiring maintenance of features of equipment in or on motor vehicles for the purpose of controlling emissions therefrom and shall do so when required pursuant to federal law regarding attainment of ambient air quality standards, and no motor vehicle may be issued a Division of Motor Vehicles registration certificate, or the existing registration certificate shall be revoked, unless the motor vehicle has been found to be in compliance with the director's legislative rule.

(e) The remedies and penalties provided in this section and section one, article three, chapter seventeen-a of this code, apply to violations hereof and the provisions of sections six or seven of this article do not apply thereto.

(f) As used in this section "motor vehicle" has the same meaning as in chapter seventeen-c of this code.

**§22-5-16. Small business environmental compliance assistance program, compliance advisory panel.**

The secretary of the Department of Commerce, labor, and environmental resources shall establish a small business stationary source technical and environmental compliance assistance program which meets the requirements of Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7661 et seq. A compliance advisory panel composed of seven members appointed as follows shall be created to periodically review the effectiveness and results of this assistance program:

(a) Two members who are not owners, nor representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

(b) One member selected by the Speaker of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(c) One member selected by the minority leader of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(d) One member selected by the President of the Senate who is an owner or who represents owners of small business stationary sources;

(e) One member selected by the minority leader of the Senate who is an owner or who represents owners of small business stationary sources; and

(f) One member selected by the director to represent the director.

**§22-5-17. Interstate ozone transport.**

(a) This section of the Air Pollution Control Act may be referred to as the Interstate Ozone Transport Oversight Act.

(b) The Legislature hereby finds that:

(1) The federal Clean Air Act, as amended, contains a comprehensive regulatory scheme for the control of emissions from mobile and stationary sources, which will improve ambient air quality and health and welfare in all parts of the nation.

(2) The number of areas unable to meet national ambient air quality standards for ozone has been declining steadily and will continue to decline with air quality improvements resulting from implementation of the federal Clean Air Act amendments of 1990, and the mobile and stationary source emission controls specified therein.

(3) Scientific research on the transport of atmospheric ozone across state boundaries is proceeding under the auspices of the United States environmental protection agency (U.S. EPA), state agencies, and private entities, which research will lead

to improved scientific understanding of the causes and nature of ozone transport, and emission control strategies potentially applicable thereto.

(4) The northeast ozone transport commission established by the federal Clean Air Act Amendments of 1990 has proposed emission control requirements for stationary and mobile sources in certain northeastern states and the District of Columbia in addition to those specified by the federal Clean Air Act amendments of 1990.

(5) Membership of the northeast ozone transport commission includes, by statute, representatives of state environmental agencies and Governors' offices; similar representation is required in the case of other ozone transport commissions established by the Administrator of the United States environmental protection agency pursuant to Section 176A of the federal Clean Air Act, as amended.

(6) The northeast ozone transport commission neither sought nor obtained state Legislative Oversight or approval prior to reaching its decisions on mobile and stationary source requirements for states included within the northeast ozone transport region.

(7) The Commonwealth of Virginia and other parties have challenged the Constitutionality of the northeast ozone transport commission and its regulatory proposals under the guarantee, compact, and joinder clauses of the United States Constitution.

(8) The United States environmental protection agency, acting outside of the aforementioned statutory requirements for the establishment of new interstate transport commissions, is encouraging the State of West Virginia and twenty-four other states outside of the northeast to participate in multistate negotiations through the ozone transport assessment group; such negotiations are intended to provide the basis for an interstate memorandum of understanding or other agreement on ozone transport requiring reductions of emissions of nitrogen oxides or volatile organic compounds in addition to those specified by the federal Clean Air Act amendments of 1990, membership of the ozone transport assessment group consists of state and federal air quality officials, without state legislative representation or participation by the Governor.

(9) Emission control requirements exceeding those specified by federal law can adversely affect state economic development, competitiveness, employment, and income without corresponding environmental benefits; in the case of electric utility emissions of nitrogen oxides, it is estimated that control costs in addition to those specified by the federal Clean Air Act could exceed $5 billion annually in a thirty-seven state region of the eastern United States, including the State of West Virginia.

(10) Requiring certain eastern states to meet emission control requirements more stringent than those otherwise applicable to other states and unnecessary for environmental protection would unfairly affect interstate competition for new industrial development and employment opportunities.

(c) It is therefore directed that:

(1) Not later than ten days subsequent to the receipt by the director of the Division of Environmental Protection of any proposed memorandum of understanding or other agreement by the ozone transport assessment group, or similar group, potentially requiring the State of West Virginia to undertake emission reductions in addition to those specified by the federal Clean Air Act, the director of the Division of Environmental Protection shall submit such proposed memorandum or other agreement to the President of the Senate and the Speaker of the House of Delegates for consideration.

(2) Upon receipt of the aforesaid memorandum of understanding or agreement, the President and the Speaker shall refer the understanding or agreement to one or more appropriate legislative committees with a request that such committees convene one or more public hearings to receive comments from agencies of government and other interested parties on its

prospective economic and environmental impacts on the State of West Virginia and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(3) Upon completion of the public hearings required by the preceding subdivision, the committees(s) shall forward to the president and the speaker a report containing its findings and recommendations concerning any proposed memorandum of understanding or other agreement related to the interstate transport of ozone. The report shall make findings with respect to the economic, health, safety and welfare and environmental impacts on the State of West Virginia and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(4) Upon receipt of the report required by the preceding subdivision, the president and speaker shall thereafter transmit the report to the Governor for such further consideration or action as may be warranted.

(5) Nothing in this section shall be construed to preclude the Legislature from taking such other action with respect to any proposed memorandum of understanding or other agreement related to the interstate transport of ozone as it deems appropriate.

(6) No person is authorized to commit the State of West Virginia to the terms of any such memorandum or agreement unless specifically approved by an act of the Legislature.

**§22-5-18. Market-based banking and trading programs, emissions credits; director to promulgate rules.**

(a) The director shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code, to the full extent allowed by federal and state law, one or more rules establishing a voluntary emissions trading and banking program that provides incentives to make progress toward the attainment or maintenance of the national ambient air quality standards, the reduction or prevention of hazardous air contaminants or the protection of human health and welfare and the environment from air pollution.

(b) The director shall establish a system by legislative rule for quantifying, verifying, determining eligibility, registering, trading and using all emissions reduction credits, for banking and trading if achieved after January 1, 1991, to the extent permitted by federal law. Credits also shall be available for permanent shutdowns. Ten percent of any emission reduction credits registered with the director shall be retired from future use: *Provided,* That fifty percent of any emission reduction credits generated from permanent shutdowns prior to the effective date of the legislative rule or rules promulgated pursuant to this section shall be retired from future use. All other emissions reduction credits registered shall remain in effect until used and debited or retired. Credits not used within ten years shall be retired from future use. The director may charge a reasonable transaction fee at the time any credits are registered and shall deposit the fees in the air pollution control fund.

The division may establish the emissions trading program as a state, multistate or regional program as long as the program contributes to the goal of improving the air quality in West Virginia and in the air quality region where the source is located.

**§22-5-19. Inventory of greenhouse gases.**

(a) The secretary shall establish a program to inventory greenhouse gas emissions from major sources that are subject to mandatory federal greenhouse gases reporting requirements. The secretary shall obtain available emissions data directly from the appropriate federal entity, including the United States Environmental Protection Agency.

(b) As used in this section, "greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydroflurocarbons, perfluorocarbons and sulfur hexafluoride.

**§22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units.**

(a) *Legislative findings. —*

(1) The United States Environmental Protection Agency has proposed a federal rule pursuant to Section 111(d) of the Clean Air Act, 42 U. S. C. §7411(d), to regulate carbon dioxide emissions from electric generating units.

(2) The rule is expected to go into effect on or about June 30, 2015, and will require each state to submit a state plan pursuant to Section 111(d) that sets forth laws, policies and regulations that will be enacted by the state to meet the federal guidelines in the rule.

(3) The creation of this state plan necessitates establishment and creation of law affecting the economy and energy policy of this state.

(4) The Environmental Protection Agency has stated that any state plan it ultimately approves shall become enforceable federal law upon that state.

(5) The state disputes the jurisdiction and purported binding nature asserted by the Environmental Protection Agency through this rule, and reserves to itself those rights and responsibilities properly reserved to the State of West Virginia.

(6) Given the economic impact and potentially legally binding nature of the submission of a state plan, there is a compelling state interest to require appropriate legislative review and passage of law prior to submission, if any, of a state plan pursuant to Section 111(d) of the Clean Air Act.

(b) *Submission of a state plan. —* Absent specific legislative enactment granting such powers or rule-making authority, the Department of Environmental Protection or any other agency or officer of state government is not authorized to submit to the Environmental Protection Agency a state plan under this section, or otherwise pursuant to Section 111(d) of the Clean Air Act:*Provided,* That the Department of Environmental Protection, in consultation with the Department of Environmental Protection Advisory Council and other necessary and appropriate agencies and entities, may develop a proposed state plan in accordance with this section.

(c) *Development of a Proposed State Plan. —* (1) The Department of Environmental Protection shall, no later than one hundred eighty days after a rule is finalized by the Environmental Protection Agency that requires the state to submit a state plan under Section 111(d) of the Clean Air Act, 42 U. S. C. § 7411(d), submit to the Legislature a report regarding the feasibility of the state's compliance with the Section 111(d) rule. The report must include a comprehensive analysis of the effect of the Section 111(d) rule on the state, including, but not limited to, the need for legislative or other changes to state law, and the factors referenced in subsection (g) of this section. The report must make at least two feasibility determinations: (i) Whether the creation of a state plan is feasible based on the comprehensive analysis; and (ii) whether the creation of a state plan is feasible before the deadline to submit a state plan to Environmental Protection Agency under the Section 111(d) rule, assuming no extensions of time are granted by Environmental Protection Agency. If the department determines that a state plan is or is not feasible under clause (i) of this subsection, the report must explain why. If the department determines that a state plan is not feasible under clause (ii) of this subsection, it shall explain how long it requires to create a state plan and then endeavor to submit such a state plan to the Legislature as soon as practicable. Such state plan may be on a unit-specific performance basis and may be based upon either a rate-based model or a mass-based model.

(2) If the department determines that the creation of a state plan is feasible, it shall develop and submit the proposed state plan to the Legislature sitting in regular session, or in an extraordinary session convened for the purpose of consideration

of the state plan, in sufficient time to allow for the consideration of the state plan prior to the deadline for submission to the Environmental Protection Agency.

(3) In addition to submitting the proposed state plan to the Legislature, the department shall publish the report and any proposed state plan on its website.

(d) If the department proposes a state plan to the Legislature in accordance with subsection (c) of this section, the department shall propose separate standards of performance for carbon dioxide emissions from existing coal-fired electric generating units in accordance with subsection (e) of this section and from existing natural gas-fired electric generating units in accordance with subsection (f) of this section. The standards of performance developed and proposed under any state plan to comply with Section 111 of the Clean Air Act should allow for greater flexibility and take into consideration the additional factors set forth in subsection (g) of this section as a part of any state plan to achieve targeted reductions in greenhouse gas emissions which are equivalent or comparable to the goals and marks established by federal guidelines.

(e) *Standards of performance for existing coal-fired electric generating units.* — Except as provided under subsection (g) of this section, the standard of performance proposed for existing coal-fired electric generating units under subsection (c) of this section may be based upon:

(1) The best system of emission reduction which, taking into account the cost of achieving the reduction and any nonair quality health and environmental impact and energy requirements, has been adequately demonstrated for coal-fired electric generating units that are subject to the standard of performance;

(2) Reductions in emissions of carbon dioxide that can reasonably be achieved through measures undertaken at each coal-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at each coal-fired electric generating unit to reduce carbon dioxide emissions from the unit without switching from coal to other fuels or limiting the economic utilization of the unit.

(f) *Standards of performance for existing natural gas-fired electric generating units.* — Except as provided in subsection (g) of this section, the standard of performance proposed for existing gas-fired electric generating units under subsection (c) of this section may be based upon:

(1) The best system of emission reduction which, taking into account the cost of achieving the reduction and any nonair quality health and environmental impact and energy requirements, has been adequately demonstrated for natural gas-fired electric generating units that are subject to the standard of performance;

(2) Reductions in emissions of carbon dioxide that can reasonably be achieved through measures at each natural gas-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at the unit to reduce carbon dioxide emissions from the unit without switching from natural gas to other lower-carbon fuels or limiting the economic utilization of the unit.

(g) Flexibility in establishing standards of performance. — In developing a flexible state plan to achieve targeted reductions in greenhouse gas emissions, the department shall endeavor to establish an achievable standard of performance for any existing fossil fuel-fired electric generating unit, and examine whether less stringent performance standards or longer compliance schedules may be implemented or adopted for existing fossil fuel-fired electric generating units in comparison to the performance standards established for new, modified or reconstructed generating units, based on the following:

(1) Consumer impacts, including any disproportionate impacts of energy price increases on lower income populations;

(2) Nonair quality health and environmental impacts;

(3) Projected energy requirements;

(4) Market-based considerations in achieving performance standards;

(5) The costs of achieving emission reductions due to factors such as plant age, location or basic process design;

(6) Physical difficulties with or any apparent inability to feasibly implement certain emission reduction measures;

(7) The absolute cost of applying the performance standard to the unit;

(8) The expected remaining useful life of the unit;

(9) The impacts of closing the unit, including economic consequences such as expected job losses at the unit and throughout the state in fossil fuel production areas including areas of coal production and natural gas production and the associated losses to the economy of those areas and the state, if the unit is unable to comply with the performance standard;

(10) Impacts on the reliability of the system; and

(11) Any other factors specific to the unit that make application of a modified or less stringent standard or a longer compliance schedule more reasonable.

(h) *Legislative consideration of proposed state plan under Section 111(d) of the Clean Air Act*. — (1) If the department submits a proposed state plan to the Legislature under this section, the Legislature may by act, including presentment to the Governor: (i) Authorize the department to submit the proposed state plan to the Environmental Protection Agency; (ii) authorize the department to submit the state plan with amendment; or (iii) not grant such rulemaking or other authority to the department for submission and implementation of the state plan.

(2) If the Legislature fails to enact or approve all or part of the proposed state plan, the department may propose a new or modified state plan to the Legislature in accordance with the requirements of this section.

(3) If the Environmental Protection Agency does not approve the state plan, in whole or in part, the department shall as soon as practicable propose a modified state plan to the Legislature in accordance with the requirements of this section.

(i) *Legal effect*. — Any obligation created by this section and any state plan submitted to the Environmental Protection Act pursuant to this section shall have no legal effect if:

(1) The Environmental Protection Agency fails to issue, or withdraws, its federal rules or guidelines for reducing carbon dioxide emissions from existing fossil fuel-fired electrical generating units under 42 U. S. C. §7411(d); or,

(2) A court of competent jurisdiction invalidates the Environmental Protection Agency's federal rules or guidelines issued to regulate emissions of carbon dioxide from existing fossil fuel-fired electrical generating units under 42 U. S. C. §7411(d).

(j) *Effective date.* — All provisions of this section are effective immediately upon passage.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 5. AIR POLLUTION CONTROL.

**§22-5-1. Declaration of policy and purpose.**

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; to assure the economic competitiveness of the state by providing for the timely processing of permit applications and other authorizations under this article; and to provide a framework within which all values may be balanced in the public interest.

Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the Federal Clean Air Act, as amended.

**§22-5-2. Definitions.**

The terms used in this article are defined as follows:

(1) "Air pollutants" means solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

(2) "Board" means the air quality board continued pursuant to the provisions of article two, chapter twenty-two-b of this code.

(3) "Director" means the director of the Division of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one, chapter twenty-two of this code.

(4) "Discharge" means any release, escape or emission of air pollutants into the air.

(5) "Person" means any and all persons, natural or artificial, including the State of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

(6) "Statutory air pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

**§22-5-3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.**

It is unlawful for any person to cause a statutory air pollution, to violate the provisions of this article, to violate any rules promulgated pursuant to this article to operate any facility subject to the permit requirements of the director without a valid permit, or to knowingly misrepresent to any person in the State of West Virginia that the sale of air pollution control equipment will meet the standards of this article or any rules promulgated pursuant to this article. Nothing contained in this article provides any person with a legal remedy or basis for damages or other relief not otherwise available to such person immediately prior to enactment of this article.

**§22-5-4. Powers and duties of director; and legal services; rules.**

(a) The director is authorized:

(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the director may deem advisable and necessary;

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: *Provided,* That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act," as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: *Provided, however,* That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof;

(5) To enter orders requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purpose of this article;

(9) To enter and inspect any property, premise or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules promulgated under the provisions of this article. No person shall refuse entry or access to any authorized representative of the director who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: *Provided,*That nothing contained in this article eliminates any obligation to follow any process that may be required by law;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources; and the director may cooperate with any public or private agency or person and receive therefrom and on behalf of the state gifts, donations, and contributions, which shall be deposited to the credit of the "Air Pollution Education and Environment Fund" which is hereby continued in the state Treasury. The moneys collected pursuant to this article which are directed to be deposited in the air pollution education and environment fund must be deposited in a separate account in the state Treasury and expenditures for purposes set forth in this article are not authorized from collection but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds

needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as he or she may determine. The members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the director about all matters pertaining to the regulation, control and abatement of air pollution within such area;

(14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the director such information as the director may require in a form or manner prescribed by him or her for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe;

(15) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the director;

(16) To do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the "Federal Clean Air Act," as amended:*Provided,* That in preparing and submitting each such plan the director shall establish in such plan that such standard shall be first achieved, maintained and enforced by limiting and controlling emissions of pollutants from commercial and industrial sources and locations and shall only provide in such plans for limiting and controlling emissions of pollutants from private dwellings and the curtilage thereof as a last resort: *Provided, however,* That nothing herein contained affects plans for achievement, maintenance and enforcement of motor vehicle emission standards and of standards for fuels used in dwellings;

(17) To promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, providing for the following:

(A) Procedures and requirements for permit applications, transfers and modifications and the review thereof;

(B) Imposition of permit application and transfer fees;

(C) Establishment of criteria for construction, modification, relocation and operating permits;

(D) Imposition of permit fees and of certificate fees: *Provided,* That any person subject to operating permit fees pursuant to section twelve of this article is exempt from imposition of the certificate fee; and

(E) Imposition of penalties and interest for the nonpayment of fees.

The fees, penalties and interest shall be deposited in a special account in the state Treasury designated the "Air Pollution Control Fund", formerly the "Air Pollution Control Commission Fund", which is hereby continued to be appropriated for the sole purpose of paying salaries and expenses of the board, the office of air quality and their employees to carry out the provisions of this article: *Provided,* That the fees, penalties and interest collected for operating permits required by section twelve of this article shall be expended solely to cover all reasonable direct and indirect costs required to administer the operating permit program. The fees collected pursuant to this subdivision must be deposited in a separate account in the state Treasury and expenditures for purposes set forth in this article are not authorized from collections but are to be made only in

accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature: *Provided, however,* That for fiscal year one thousand nine hundred ninety-three, expenditures are permitted from collections without appropriation by the Legislature; and

(18) Receipt of any money by the director as a result of the entry of any consent order shall be deposited in the state Treasury to the credit of the air pollution education and environment fund.

(b) The Attorney General and his or her assistants and the prosecuting attorneys of the several counties shall render to the director without additional compensation such legal services as the director may require of them to enforce the provisions of this article.

**§22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocatio appeals to board.**

If, from any investigation made by the director or from any complaint filed with him or her, the director is of the opinion that a person is violating the provisions of this article, or any rules promulgated pursuant thereto, he or she shall make and enter an order directing the person to cease and desist the activity, unless the director determines the violation is of a minor nature or the violation has been abated. The director shall fix a reasonable time in such order by which the activity must stop or be prevented. The order shall contain the findings of fact upon which the director determined to make and enter the order.

If, after any investigation made by the director, or from any complaint filed with him or her, the director is of the opinion that a permit holder is violating the provisions of this article, or any rules promulgated pursuant thereto, or any order of the director, or any provision of a permit, the director may issue notice of intent to suspend, modify or revoke and reissue such permit. Upon notice of the director's intent to suspend, modify or revoke a permit, the permit holder may request a conference with the director to show cause why the permit should not be suspended, modified or revoked. The request for conference must be received by the director within fifteen days following receipt of notice. After conference or fifteen days after issuance of notice of intent, if no conference is requested, the director may enter an order suspending, modifying or revoking the permit and send notice to the permit holder. Such order is a cease and desist order for purposes of administrative and judicial review and shall contain findings of fact upon which the director determined to make and enter the order. If an appeal of the director's order is filed, the order of the director shall be stayed from the date of issuance pending a final decision of the board.

The director shall cause a copy of any such order to be served upon the person by registered or certified mail or by any proper law-enforcement officer.

Any person upon whom a copy of the final order has been served may appeal such order to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

**§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.**

(a) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is subject to a civil penalty not to exceed $10,000 for each day of such violation, which penalty shall be recovered in a civil action brought by the director in the name of the State of West Virginia in the circuit court of any county wherein the person resides or is engaged in the activity complained of or in the circuit court of Kanawha County. The amount of the penalty shall be fixed by the court without a jury:*Provided,* That any person is not subject

to civil penalties unless the person has been given written notice thereof by the director: *Provided, however,* That for the first such minor violation, if the person corrects the violation within the time as was specified in the notice of violation issued by the director, no civil penalty may be recovered: *Provided further,* That if the person fails to correct a minor violation or for any serious or subsequent serious or minor violation, the person is subject to civil penalties imposed pursuant to this section from the first day of the violation notwithstanding the date of the issuance or receipt of the notice of violation. The director shall, by rule subject to the provisions of chapter twenty-nine-a of this code, determine the definitions of serious and minor violations. The amount of any penalty collected by the director shall be deposited in the general revenue of the state Treasury according to law.

(b)(1) Any person who knowingly misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 or imprisoned in the county jail not more than six months or both fined and imprisoned: *Provided,* That if the violation occurs on separate days or is continuing in nature, the fine shall be no more than $25,000 for each day of such violation.

(2) Any person who knowingly violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 for each day of such violation or imprisoned in the county jail not more than one year or both fined and imprisoned.

(c) Upon a request in writing from the director it is the duty of the Attorney General and the prosecuting attorney of the county in which any such action for penalties accruing under this section or section seven of this article may be brought to institute and prosecute all such actions on behalf of the director.

(d) For the purpose of this section, violations on separate days are separate offenses.

**§22-5-7. Applications for injunctive relief.**

The director may seek an injunction against any person in violation of any provision of this article or any permit, rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief brought under this section or for civil penalty brought under section six of this article may be filed and relief granted notwithstanding the fact that all administrative remedies provided in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

In any action brought pursuant to the provisions of section six or of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

**§22-5-8. Emergencies.**

Whenever air pollution conditions in any area of the state become such as, in the opinion of the director, to create an emergency and to require immediate action for the protection of the public health, the director may, with the written approval of the Governor, so find and enter such order as it deems necessary to reduce or prevent the emission of air pollutants substantially contributing to such conditions. In any such order the director shall also fix a time, not later than twenty-four hours thereafter, and place for a hearing to be held before it for the purpose of investigating and determining the factors causing or

contributing to such conditions. A true copy of any such order shall be served upon persons whose interests are directly prejudiced thereby in the same manner as a summons in a civil action may be served, and a true copy of such order shall also be posted on the front door of the courthouse of the county in which the alleged conditions originated. All persons whose interests are prejudiced or affected in any manner by any such order shall have the right to appear in person or by counsel at the hearing and to present evidence relevant to the subject of the hearing. Within twenty-four hours after completion of the hearing the director shall affirm, modify or set aside said order in accordance and consistent with the evidence adduced. Any person aggrieved by such action of the director may thereafter apply by petition to the circuit court of the county for a review of the director's action. The circuit court shall forthwith fix a time for hearing de novo upon the petition and shall, after such hearing, by order entered of record, affirm, modify or set aside, in whole or in part, the order and action of the director. Any person whose interests shall have been substantially affected by the final order of the circuit court may appeal the same to the Supreme Court of Appeals in the manner prescribed by law.

**§22-5-9. Powers reserved to secretary of the Department of Health and Human Resources, Commissioner of Bur for Public Health, local health boards and political subdivisions; conflicting statutes repealed.**

Nothing in this article affects or limits the powers or duties heretofore conferred by the provisions of chapter sixteen of this code upon the the Secretary of the Department of Health and Human Resources, the Commissioner of the Bureau for Public Health, county health boards, county health officers, municipal health boards, municipal health officers, combined boards of health or any other health agency or political subdivision of this state except insofar as such powers and duties might otherwise apply to the control, reduction or abatement of air pollution. All existing statutes or parts of statutes are, to the extent of their inconsistencies with the provisions of this article and to the extent that they might otherwise apply to the control, reduction or abatement of air pollution, hereby repealed: *Provided,* That no ordinance previously adopted by any municipality relating to the control, reduction or abatement of air pollution is repealed by this article.

**§22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.**

(a) All air quality data, emission data, permits, compliance schedules, orders of the director, board orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as "records, reports, data or information") obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of the person, the director shall consider these records, reports, data or information or a particular portion thereof confidential: *Provided,* That this confidentiality does not apply to the types and amounts of air pollutants discharged and that these records, reports, data or information may be disclosed to other officers, employees or authorized representatives of the state or of the federal environmental protection agency concerned with enforcing this article, the federal Clean Air Act, as amended, or the federal Resource Conservation and Recovery Act, as amended, when relevant to any official proceedings thereunder: *Provided, however,* That the officers, employees or authorized representatives of the state or federal environmental protection agency protect these records, reports, data or information to the same degree required of the director by this section. The director shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section.

(b) Upon receipt of a request for records, reports, data or information which constitute trade secrets and prior to making a final determination to grant or deny the request, the director shall notify the person claiming that any record, report, data or information is entitled to protection as a trade secret, and allow the person an opportunity to respond to the request in writing.

(c) All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of a request, the director or his or her designate shall by order: (1) Advise the person making the request of the time and place at which the person may inspect and copy the documents, which, if the request addresses information claimed as confidential, may not be sooner than thirty days following the date of the determination to disclose, unless an earlier disclosure date is agreed to by the person claiming the confidentiality; or (2) deny the request, stating in writing the reasons for denial. If the request addresses information claimed as confidential, notice of the action taken pursuant to this subsection shall also be provided to the person asserting the claim of confidentiality.

Any person adversely affected by a determination, by order or otherwise, regarding information confidentiality under this article may appeal the determination to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code. The filing of a timely notice of appeal shall stay any determination, by order or otherwise, to disclose confidential information pending a final decision on the appeal. The scope of review is limited to the question of whether the records, reports, data or other information, or any particular part thereof sought to be inspected or copied, are entitled to be treated as confidential under subsection (a) of this section. The air quality board shall afford evidentiary protection in appeals as is necessary to protect the confidentiality of the information at issue, including the use of in camera proceedings and the sealing of records where appropriate.

(d) In lieu of the provision of chapter twenty-nine-b of this code, the provision of this section shall apply to determinations of confidentiality.

**§22-5-11. Construction, modification or relocation permits required for stationary sources of air pollutants.**

(a) Unless otherwise specifically provided in this article, no person shall construct, modify or relocate any stationary source of air pollutants without first obtaining a construction, modification or relocation permit as provided in this article.

(b) The secretary shall by rule specify the class or categories of stationary sources to which this section applies. Application for permits shall be made upon such form, in such manner, and within such time as the rule prescribes and shall include such information, as in the judgment of the secretary, will enable him or her to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules of the secretary.

(c) Unless otherwise specifically provided in this article, the secretary shall issue a permit for a major stationary source within a reasonable time not to exceed three hundred sixty-five calendar days, after the secretary determines that the application is complete.

(d) Unless otherwise specifically provided in this article, the secretary shall issue a permit for all other sources including modifications of existing major stationary sources which are not major modifications within a reasonable time not to exceed ninety calendar days, after the date the secretary determines the application is complete. The Secretary may extend this time by thirty calendar days to allow for public comment.

(e) A permit application will be denied if the secretary determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated thereunder.

(f) For purposes of this section, a modification is any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant discharged by a source above the de minimis level set by the secretary.

(g) With respect to the construction of new nonmajor stationary sources, or modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, or relocations of nonmajor stationary sources, the following requirements apply:

(1) The secretary shall issue an administrative update to a permit issued under this section with respect to any of these sources, unless he or she determines that the proposed administrative update will not be in accordance with this article or rules promulgated hereunder, in which case the secretary shall issue an order denying the administrative update. Any administrative update shall be issued by the secretary within a reasonable time not to exceed sixty calendar days after receipt of a complete application. Administrative updates are minor revisions of existing permits as further described and authorized by rule.

(2) The secretary shall, within a reasonable time not to exceed forty-five calendar days after the date the secretary determines that an application is complete, issue a registration under a general permit applicable to any of these sources, unless he or she determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated hereunder. General permits are permits authorizing the construction, modification or relocation of a category of sources by the same owner or operator or involving the same or similar processes or pollutants upon the terms and conditions specified in the general permit for those types of sources.

(3) The secretary shall, within a reasonable time not to exceed forty-five calendar days after receipt of a complete application, issue a temporary permit or a relocation permit, unless he or she determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated hereunder. Temporary permits are permits authorizing the owner or operator to make limited changes for limited periods of time as further described and authorized by rule.

(h) The secretary shall determine whether an application filed under this section is complete within thirty calendar days after receipt of that application at which time the secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

(i) The secretary, shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty nine-a of this code, to implement the provisions of this section by August 1, 2008.

**§22-5-11a. Activities authorized in advance of permit issuance.**

(a) With respect to the modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, the following activities are authorized in advance of permit issuance. Any authorized activities undertaken by or on behalf of the permit applicant prior to the issuance of a final permitting action by the secretary are undertaken at the permit applicant's own risk and with the knowledge that the application for a permit or permit modification may be denied:

(1) Receiving or storing on-site or off-site any equipment or supplies which make up in part or in whole an emission unit or any support equipment, facilities, building or structure.

(2) A person who holds an active West Virginia air quality permit issued under this article at an existing source, and who has applied to the secretary for permission to alter, expand or modify that source or to allow a new emissions unit at that source, may begin the construction of any such alteration, expansion, modification or new emission unit in advance of permit issuance in accordance with this section. The person may not operate any altered, expanded, modified or new emission unit without first obtaining an air quality permit as required by rules promulgated by the secretary.

(3) The following sources are ineligible for submission of an application for permission to commence construction in advance of permit issuance:

(A) Sources subject to the "Federal Clean Air Act" subsections 112(g) or 112(j).

(B) Sources seeking federally enforceable permit conditions in order to avoid otherwise applicable standards;

(C) Sources requiring a specific case-by-case emission limitation or standard under 45CSR21 or 45CSR27.

(4)(A) To qualify for the authorization to construct in advance of permit issuance as provided in this section, the permittee shall submit to the secretary an application for permission to commence construction in advance of permit issuance.

(B) Such application for permission to commence construction shall include all of the following:

(1) The name and location of the source and the name and address of the permittee;

(2) The permit number of each active permit issued under this article for such source;

(3) The nature of the sources and equipment associated with

such alteration, expansion, modification or new emission unit;

(4) An estimate of the maximum hourly and annual emissions of regulated air pollutants increased as a result of such alteration, expansion, modification or new emission unit;

(5) The air pollution control devices or methods that are to be employed in connection with the alteration, expansion, modification or new emission unit;

(6) A listing of the applicable state and federal air quality regulatory requirements for alteration, expansion, modification or new emission unit, and sufficient information which, in the judgement of the secretary, will demonstrate compliance with any applicable state and federal air quality regulatory requirements;

(7) The anticipated construction or building schedule for alteration, expansion, modification or new emission unit;

(8) A certification signed by the responsible official that the source, equipment and devices that are subject to a request for construction authorization will not be operated until the permittee has obtained a permit under rules promulgated by the secretary;

(9) A certification by the responsible official that any construction undertaken prior to the issuance of a final permit under rules of the secretary is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a permit or permit modification without regard to the permittee's financial investment or addition to or modification of the source;

(10) A certification signed by the responsible official that all of the information contained in the application is complete and accurate to the best of the responsible official's knowledge and ability; and

(11) Upon submission of the application for permission to construct, the applicant shall give notice by publishing a Class I legal advertisement of the applicant's intent to alter or expand the physical arrangement or operation of an existing stationary source and the opportunity to provide written comment to the secretary within thirty calendar days of the publication. The applicant shall post a visible and accessible sign, at a minimum 2 feet square, at the entrance to the source or proposed

site. The sign must be clearly marked indicating that an air quality permit has been applied for and include the West Virginia Division of Air Quality permitting section telephone number and web site for additional information. The applicant must post the sign for the duration of the public notice period. Public notice shall be in a newspaper having general circulation in the county or counties where the facility is located. The notice shall contain the information required by rules promulgated by the secretary. Within fifteen days of completion of the public comment period, the secretary shall consider and respond to all written comments. If the secretary finds that concerns raised by the public comment period give rise to issues or concerns that would cause a construction or operational permit not to be issued, the secretary may issue a revocation or stay of the authorization to construct until those issues or concerns are resolved.

(c) The secretary shall determine whether an application for permission to commence construction in advance of permit issuance is complete within fifteen calendar days after receipt of the application at which time the secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

(d) Within fifteen calendar days after the secretary has made a determination that an application for permission to commence construction in advance of permit issuance is complete, unless the secretary for good cause shown, extends the fifteen day time period for up to an additional fifteen calendar days, the secretary shall notify the applicant in writing of his or her determination as to whether each of the following conditions has or has not been satisfied:

(1) The applicant is and has been for a period of at least three years in substantial compliance with all other active permits and applicable state and federal air quality regulatory requirements under this article;

(2) The applicant has demonstrated that the alteration, expansion, modification or new emission unit will be in compliance with all applicable state and federal air quality regulatory requirements;

(3) The alteration, expansion, modification or new emission unit will not interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment or be inconsistent with the intent and purpose of this article;

(4) The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted;

(5) The alteration or expansion will not result in a disproportionate increase in size of the facility already permitted; and

(6) The alteration or expansion will result in the same or substantially similar emissions as the facility already permitted.

If the secretary finds that all of the conditions have been satisfied, the notice issued by the secretary shall state that construction of the alteration, expansion, modification or new emission unit in advance of permit issuance may begin immediately. If the secretary finds that one or more of the conditions has not been met, the notice shall state that the requested construction, alteration, expansion, modification or new emission unit may not begin prior to issuance of a new or modified permit.

(e) If at any time during the construction of such alteration, expansion, modification or new emission unit, the secretary determines that the source is not likely to qualify for a permit or permit modification under applicable rules, the secretary may order that construction cease until the secretary makes a decision on the application for a permit or permit modification. If the secretary orders that construction cease, then construction of the alteration, expansion, modification or new emission unit may resume only if the secretary either makes a subsequent written determination that the circumstances that resulted in such

order have been adequately addressed or if the secretary issues a permit or permit modification under the rules that authorize construction to resume.

(f) The secretary shall evaluate an application for a permit or permit modification under the rules and make a decision on the same basis as if the construction of the alteration, expansion, modification or new emission unit in advance of permit issuance had not been authorized pursuant to this section. No evidence regarding any contract entered into, financial investment made, construction undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under this article is admissible in any contested case or judicial proceeding involving any permit required under the rules. No evidence as to any determination or order by the secretary pursuant to this section shall be admissible in any contested case or judicial proceeding related to any permit required under this article.

(g) Any permittee who proceeds under this section shall be precluded from bringing any action, suit or proceeding against the state, the officials, agents, and employees of the state or the secretary for any loss resulting from any contract entered into, financial investment made, construction undertaken, or economic loss incurred by the permittee in reliance upon the provisions of this section.

(h) This section does not relieve any person of the obligation to comply with any other requirement of state law, including any requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of the site or the alteration or expansion of the physical arrangement or method of operation of a source at a facility for which a permit is required under the rules.

(i) This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any state implementation plan, or federally approved requirement under the Title V permitting program, as determined solely by the secretary. This section does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the secretary. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any state implementation plan, or federally approved requirement under the Title V permitting program, as determined solely by the secretary.

(j) A permittee who submits an application to commence construction in advance of permit issuance under this section shall pay to the department a fee of $200 for each application submitted to cover a portion of the administrative costs of implementing this section.

(k) The secretary, in accordance with chapter twenty-nine-a of this code, shall propose legislative rule that may be necessary to implement the provisions of this section by August 1, 2008.

(l) The secretary is directed to report back to the Joint Committee on Government and Finance by January 1, 2010, on the impact of the implementation of the expedited permits authorized pursuant to this section. The report shall include, but not be limited to, assessments regarding the number and types of facilities utilizing this section, whether the agency has found this expedited process has assisted these facilities to implement construction and make revisions to their operations efficiently, without adverse impacts on the agency, the permitting process, or statewide air quality.

**§22-5-12. Operating permits required for stationary sources of air pollution.**

No person may operate a stationary source of air pollutants without first obtaining an operating permit as provided in this section. The director shall promulgate legislative rules, in accordance with chapter twenty-nine-a of this code, which

specify classes or categories of stationary sources which are required to obtain an operating permit. The legislative rule shall provide for the form and content of the application procedure including time limitations for obtaining the required permits. Any person who has filed a timely and complete application for a permit or renewal thereof required by this section, and who is abiding by the requirements of this article and the rules promulgated pursuant thereto is in compliance with the requirements of this article and any rule promulgated thereunder until a permit is issued or denied. Any legislative rule promulgated pursuant to the authority granted by this section shall be equivalent to and consistent with rules and regulations adopted by the administrator of United States environmental protection agency pursuant to Title IV and Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7651*et seq*. and 42 U.S.C. §7661 *et seq*., respectively: *Provided,* That such legislative rule may deviate from the federal rules and regulations where a deviation is appropriate to implement the policy and purpose of this article taking into account such factors unique to West Virginia.

**§22-5-13. Consolidation of permits.**

For permits required by sections eleven and twelve of this article, the director may incorporate the required permits with an existing permit or consolidate the required permits into a single permit.

**§22-5-14. Administrative review of permit actions.**

Any person whose interest may be affected, including, but not necessarily limited to, the applicant and any person who participated in the public comment process, by a permit issued, modified or denied by the secretary, or construction authorization pursuant to section eleven-a of this article, may appeal such action of the secretary to the air quality board pursuant to article one, chapter twenty-two-b of this code.

**§22-5-15. Motor vehicle pollution, inspection and maintenance.**

(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate and in furtherance of the purposes of this article, the director may provide by legislative rule for the control of emissions from motor vehicles. The legislative rule may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any legislative rule pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The director shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law or legislative rule, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle required by rules of the director to be maintained in or on the vehicle. Any such failure to maintain in good working order or removal, dismantling or causing of inoperability subjects the owner or operator to suspension or cancellation of the registration for the vehicle by the Department of Transportation, Division of Motor Vehicles. The vehicle is not thereafter eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(c) The Department of Transportation, Division of Motor Vehicles, Department of Administration, information and communication services division and the State Police shall make available technical information and records to the director to implement the legislative rule regarding motor vehicle pollution, inspection and maintenance. The director may promulgate a

legislative rule establishing motor vehicle pollution, inspection and maintenance standards and imposing an inspection fee at a rate sufficient to implement the motor vehicle inspection program and shall do so when required pursuant to federal law regarding attainment of ambient air quality standards.

(d) The director may promulgate a legislative rule requiring maintenance of features of equipment in or on motor vehicles for the purpose of controlling emissions therefrom and shall do so when required pursuant to federal law regarding attainment of ambient air quality standards, and no motor vehicle may be issued a Division of Motor Vehicles registration certificate, or the existing registration certificate shall be revoked, unless the motor vehicle has been found to be in compliance with the director's legislative rule.

(e) The remedies and penalties provided in this section and section one, article three, chapter seventeen-a of this code, apply to violations hereof and the provisions of sections six or seven of this article do not apply thereto.

(f) As used in this section "motor vehicle" has the same meaning as in chapter seventeen-c of this code.

**§22-5-16. Small business environmental compliance assistance program, compliance advisory panel.**

The secretary of the Department of Commerce, labor, and environmental resources shall establish a small business stationary source technical and environmental compliance assistance program which meets the requirements of Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7661 et seq. A compliance advisory panel composed of seven members appointed as follows shall be created to periodically review the effectiveness and results of this assistance program:

(a) Two members who are not owners, nor representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

(b) One member selected by the Speaker of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(c) One member selected by the minority leader of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(d) One member selected by the President of the Senate who is an owner or who represents owners of small business stationary sources;

(e) One member selected by the minority leader of the Senate who is an owner or who represents owners of small business stationary sources; and

(f) One member selected by the director to represent the director.

**§22-5-17. Interstate ozone transport.**

(a) This section of the Air Pollution Control Act may be referred to as the Interstate Ozone Transport Oversight Act.

(b) The Legislature hereby finds that:

(1) The federal Clean Air Act, as amended, contains a comprehensive regulatory scheme for the control of emissions from mobile and stationary sources, which will improve ambient air quality and health and welfare in all parts of the nation.

(2) The number of areas unable to meet national ambient air quality standards for ozone has been declining steadily and will continue to decline with air quality improvements resulting from implementation of the federal Clean Air Act amendments of 1990, and the mobile and stationary source emission controls specified therein.

(3) Scientific research on the transport of atmospheric ozone across state boundaries is proceeding under the auspices of the United States environmental protection agency (U.S. EPA), state agencies, and private entities, which research will lead

to improved scientific understanding of the causes and nature of ozone transport, and emission control strategies potentially applicable thereto.

(4) The northeast ozone transport commission established by the federal Clean Air Act Amendments of 1990 has proposed emission control requirements for stationary and mobile sources in certain northeastern states and the District of Columbia in addition to those specified by the federal Clean Air Act amendments of 1990.

(5) Membership of the northeast ozone transport commission includes, by statute, representatives of state environmental agencies and Governors' offices; similar representation is required in the case of other ozone transport commissions established by the Administrator of the United States environmental protection agency pursuant to Section 176A of the federal Clean Air Act, as amended.

(6) The northeast ozone transport commission neither sought nor obtained state Legislative Oversight or approval prior to reaching its decisions on mobile and stationary source requirements for states included within the northeast ozone transport region.

(7) The Commonwealth of Virginia and other parties have challenged the Constitutionality of the northeast ozone transport commission and its regulatory proposals under the guarantee, compact, and joinder clauses of the United States Constitution.

(8) The United States environmental protection agency, acting outside of the aforementioned statutory requirements for the establishment of new interstate transport commissions, is encouraging the State of West Virginia and twenty-four other states outside of the northeast to participate in multistate negotiations through the ozone transport assessment group; such negotiations are intended to provide the basis for an interstate memorandum of understanding or other agreement on ozone transport requiring reductions of emissions of nitrogen oxides or volatile organic compounds in addition to those specified by the federal Clean Air Act amendments of 1990, membership of the ozone transport assessment group consists of state and federal air quality officials, without state legislative representation or participation by the Governor.

(9) Emission control requirements exceeding those specified by federal law can adversely affect state economic development, competitiveness, employment, and income without corresponding environmental benefits; in the case of electric utility emissions of nitrogen oxides, it is estimated that control costs in addition to those specified by the federal Clean Air Act could exceed $5 billion annually in a thirty-seven state region of the eastern United States, including the State of West Virginia.

(10) Requiring certain eastern states to meet emission control requirements more stringent than those otherwise applicable to other states and unnecessary for environmental protection would unfairly affect interstate competition for new industrial development and employment opportunities.

(c) It is therefore directed that:

(1) Not later than ten days subsequent to the receipt by the director of the Division of Environmental Protection of any proposed memorandum of understanding or other agreement by the ozone transport assessment group, or similar group, potentially requiring the State of West Virginia to undertake emission reductions in addition to those specified by the federal Clean Air Act, the director of the Division of Environmental Protection shall submit such proposed memorandum or other agreement to the President of the Senate and the Speaker of the House of Delegates for consideration.

(2) Upon receipt of the aforesaid memorandum of understanding or agreement, the President and the Speaker shall refer the understanding or agreement to one or more appropriate legislative committees with a request that such committees convene one or more public hearings to receive comments from agencies of government and other interested parties on its

prospective economic and environmental impacts on the State of West Virginia and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(3) Upon completion of the public hearings required by the preceding subdivision, the committees(s) shall forward to the president and the speaker a report containing its findings and recommendations concerning any proposed memorandum of understanding or other agreement related to the interstate transport of ozone. The report shall make findings with respect to the economic, health, safety and welfare and environmental impacts on the State of West Virginia and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(4) Upon receipt of the report required by the preceding subdivision, the president and speaker shall thereafter transmit the report to the Governor for such further consideration or action as may be warranted.

(5) Nothing in this section shall be construed to preclude the Legislature from taking such other action with respect to any proposed memorandum of understanding or other agreement related to the interstate transport of ozone as it deems appropriate.

(6) No person is authorized to commit the State of West Virginia to the terms of any such memorandum or agreement unless specifically approved by an act of the Legislature.

**§22-5-18. Market-based banking and trading programs, emissions credits; director to promulgate rules.**

(a) The director shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code, to the full extent allowed by federal and state law, one or more rules establishing a voluntary emissions trading and banking program that provides incentives to make progress toward the attainment or maintenance of the national ambient air quality standards, the reduction or prevention of hazardous air contaminants or the protection of human health and welfare and the environment from air pollution.

(b) The director shall establish a system by legislative rule for quantifying, verifying, determining eligibility, registering, trading and using all emissions reduction credits, for banking and trading if achieved after January 1, 1991, to the extent permitted by federal law. Credits also shall be available for permanent shutdowns. Ten percent of any emission reduction credits registered with the director shall be retired from future use: *Provided,* That fifty percent of any emission reduction credits generated from permanent shutdowns prior to the effective date of the legislative rule or rules promulgated pursuant to this section shall be retired from future use. All other emissions reduction credits registered shall remain in effect until used and debited or retired. Credits not used within ten years shall be retired from future use. The director may charge a reasonable transaction fee at the time any credits are registered and shall deposit the fees in the air pollution control fund.

The division may establish the emissions trading program as a state, multistate or regional program as long as the program contributes to the goal of improving the air quality in West Virginia and in the air quality region where the source is located.

**§22-5-19. Inventory of greenhouse gases.**

(a) The secretary shall establish a program to inventory greenhouse gas emissions from major sources that are subject to mandatory federal greenhouse gases reporting requirements. The secretary shall obtain available emissions data directly from the appropriate federal entity, including the United States Environmental Protection Agency.

(b) As used in this section, "greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydroflurocarbons, perfluorocarbons and sulfur hexafluoride.

**§22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units.**

(a) *Legislative findings. —*

(1) The United States Environmental Protection Agency has proposed a federal rule pursuant to Section 111(d) of the Clean Air Act, 42 U. S. C. §7411(d), to regulate carbon dioxide emissions from electric generating units.

(2) The rule is expected to go into effect on or about June 30, 2015, and will require each state to submit a state plan pursuant to Section 111(d) that sets forth laws, policies and regulations that will be enacted by the state to meet the federal guidelines in the rule.

(3) The creation of this state plan necessitates establishment and creation of law affecting the economy and energy policy of this state.

(4) The Environmental Protection Agency has stated that any state plan it ultimately approves shall become enforceable federal law upon that state.

(5) The state disputes the jurisdiction and purported binding nature asserted by the Environmental Protection Agency through this rule, and reserves to itself those rights and responsibilities properly reserved to the State of West Virginia.

(6) Given the economic impact and potentially legally binding nature of the submission of a state plan, there is a compelling state interest to require appropriate legislative review and passage of law prior to submission, if any, of a state plan pursuant to Section 111(d) of the Clean Air Act.

(b) *Submission of a state plan. —* Absent specific legislative enactment granting such powers or rule-making authority, the Department of Environmental Protection or any other agency or officer of state government is not authorized to submit to the Environmental Protection Agency a state plan under this section, or otherwise pursuant to Section 111(d) of the Clean Air Act:*Provided,* That the Department of Environmental Protection, in consultation with the Department of Environmental Protection Advisory Council and other necessary and appropriate agencies and entities, may develop a proposed state plan in accordance with this section.

(c) *Development of a Proposed State Plan. —* (1) The Department of Environmental Protection shall, no later than one hundred eighty days after a rule is finalized by the Environmental Protection Agency that requires the state to submit a state plan under Section 111(d) of the Clean Air Act, 42 U. S. C. § 7411(d), submit to the Legislature a report regarding the feasibility of the state's compliance with the Section 111(d) rule. The report must include a comprehensive analysis of the effect of the Section 111(d) rule on the state, including, but not limited to, the need for legislative or other changes to state law, and the factors referenced in subsection (g) of this section. The report must make at least two feasibility determinations: (i) Whether the creation of a state plan is feasible based on the comprehensive analysis; and (ii) whether the creation of a state plan is feasible before the deadline to submit a state plan to Environmental Protection Agency under the Section 111(d) rule, assuming no extensions of time are granted by Environmental Protection Agency. If the department determines that a state plan is or is not feasible under clause (i) of this subsection, the report must explain why. If the department determines that a state plan is not feasible under clause (ii) of this subsection, it shall explain how long it requires to create a state plan and then endeavor to submit such a state plan to the Legislature as soon as practicable. Such state plan may be on a unit-specific performance basis and may be based upon either a rate-based model or a mass-based model.

(2) If the department determines that the creation of a state plan is feasible, it shall develop and submit the proposed state plan to the Legislature sitting in regular session, or in an extraordinary session convened for the purpose of consideration

of the state plan, in sufficient time to allow for the consideration of the state plan prior to the deadline for submission to the Environmental Protection Agency.

(3) In addition to submitting the proposed state plan to the Legislature, the department shall publish the report and any proposed state plan on its website.

(d) If the department proposes a state plan to the Legislature in accordance with subsection (c) of this section, the department shall propose separate standards of performance for carbon dioxide emissions from existing coal-fired electric generating units in accordance with subsection (e) of this section and from existing natural gas-fired electric generating units in accordance with subsection (f) of this section. The standards of performance developed and proposed under any state plan to comply with Section 111 of the Clean Air Act should allow for greater flexibility and take into consideration the additional factors set forth in subsection (g) of this section as a part of any state plan to achieve targeted reductions in greenhouse gas emissions which are equivalent or comparable to the goals and marks established by federal guidelines.

(e) *Standards of performance for existing coal-fired electric generating units.* — Except as provided under subsection (g) of this section, the standard of performance proposed for existing coal-fired electric generating units under subsection (c) of this section may be based upon:

(1) The best system of emission reduction which, taking into account the cost of achieving the reduction and any nonair quality health and environmental impact and energy requirements, has been adequately demonstrated for coal-fired electric generating units that are subject to the standard of performance;

(2) Reductions in emissions of carbon dioxide that can reasonably be achieved through measures undertaken at each coal-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at each coal-fired electric generating unit to reduce carbon dioxide emissions from the unit without switching from coal to other fuels or limiting the economic utilization of the unit.

(f) *Standards of performance for existing natural gas-fired electric generating units.* — Except as provided in subsection (g) of this section, the standard of performance proposed for existing gas-fired electric generating units under subsection (c) of this section may be based upon:

(1) The best system of emission reduction which, taking into account the cost of achieving the reduction and any nonair quality health and environmental impact and energy requirements, has been adequately demonstrated for natural gas-fired electric generating units that are subject to the standard of performance;

(2) Reductions in emissions of carbon dioxide that can reasonably be achieved through measures at each natural gas-fired electric generating unit; and

(3) Efficiency and other measures that can be undertaken at the unit to reduce carbon dioxide emissions from the unit without switching from natural gas to other lower-carbon fuels or limiting the economic utilization of the unit.

(g) Flexibility in establishing standards of performance. — In developing a flexible state plan to achieve targeted reductions in greenhouse gas emissions, the department shall endeavor to establish an achievable standard of performance for any existing fossil fuel-fired electric generating unit, and examine whether less stringent performance standards or longer compliance schedules may be implemented or adopted for existing fossil fuel-fired electric generating units in comparison to the performance standards established for new, modified or reconstructed generating units, based on the following:

(1) Consumer impacts, including any disproportionate impacts of energy price increases on lower income populations;

(2) Nonair quality health and environmental impacts;

(3) Projected energy requirements;

(4) Market-based considerations in achieving performance standards;

(5) The costs of achieving emission reductions due to factors such as plant age, location or basic process design;

(6) Physical difficulties with or any apparent inability to feasibly implement certain emission reduction measures;

(7) The absolute cost of applying the performance standard to the unit;

(8) The expected remaining useful life of the unit;

(9) The impacts of closing the unit, including economic consequences such as expected job losses at the unit and throughout the state in fossil fuel production areas including areas of coal production and natural gas production and the associated losses to the economy of those areas and the state, if the unit is unable to comply with the performance standard;

(10) Impacts on the reliability of the system; and

(11) Any other factors specific to the unit that make application of a modified or less stringent standard or a longer compliance schedule more reasonable.

(h) *Legislative consideration of proposed state plan under Section 111(d) of the Clean Air Act*. — (1) If the department submits a proposed state plan to the Legislature under this section, the Legislature may by act, including presentment to the Governor: (i) Authorize the department to submit the proposed state plan to the Environmental Protection Agency; (ii) authorize the department to submit the state plan with amendment; or (iii) not grant such rulemaking or other authority to the department for submission and implementation of the state plan.

(2) If the Legislature fails to enact or approve all or part of the proposed state plan, the department may propose a new or modified state plan to the Legislature in accordance with the requirements of this section.

(3) If the Environmental Protection Agency does not approve the state plan, in whole or in part, the department shall as soon as practicable propose a modified state plan to the Legislature in accordance with the requirements of this section.

(i) *Legal effect*. — Any obligation created by this section and any state plan submitted to the Environmental Protection Act pursuant to this section shall have no legal effect if:

(1) The Environmental Protection Agency fails to issue, or withdraws, its federal rules or guidelines for reducing carbon dioxide emissions from existing fossil fuel-fired electrical generating units under 42 U. S. C. §7411(d); or,

(2) A court of competent jurisdiction invalidates the Environmental Protection Agency's federal rules or guidelines issued to regulate emissions of carbon dioxide from existing fossil fuel-fired electrical generating units under 42 U. S. C. §7411(d).

(j) *Effective date.* — All provisions of this section are effective immediately upon passage.

# W. Va. Code § 29B-1-1 et seq.

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CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

**§29B-1-1. Declaration of policy.**

Pursuant to the fundamental philosophy of the American Constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the State of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy.

**§29B-1-2. Definitions.**

As used in this article:

(1) "Custodian" means the elected or appointed official charged with administering a public body.

(2) “Law-enforcement officer” shall have the same definition as this term is defined in W.Va. Code §30-29-1: *Provided*, That for purposes of this article, “law-enforcement officer” shall additionally include those individuals defined as “chief executive” in W.Va. Code §30-29-1.

(3) "Person" includes any natural person, corporation, partnership, firm or association.

(4) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

(5) "Public record" includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business.

(6) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

**§29B-1-3. Inspection and copying of public record; requests of Freedom of Information Act requests registry.**

(a) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article.

(b) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(c) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his or her duties. If the records requested exist in

magnetic, electronic or computer form, the custodian of the records shall make copies available on magnetic or electronic media, if so requested.

(d) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

(1) Furnish copies of the requested information;

(2) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or

(3) Deny the request stating in writing the reasons for such denial. A denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(e) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of records. A public body may not charge a search or retrieval fee or otherwise seek reimbursement based on a man-hour basis as part of costs associated with making reproduction of records.

(f) The Secretary of State shall maintain an electronic data base of notices of requests as required by section three-a of this article. The database shall be made available to the public via the Internet and shall list each freedom of information request received and the outcome of the request. The Secretary of State shall provide on the website a form for use by a public body to report the results of the freedom of information request, providing the nature of the request and the public body's response thereto, whether the request was granted, and if not, the exemption asserted under section four of this article to deny the request.

**§29B-1-3a. Reports to Secretary of State by public bodies.**

(a) Beginning January 1, 2016, each public body that is in receipt of a freedom of information request shall provide information to the Secretary of State relating to, at a minimum, the nature of the request, the nature of the public body's response, the time-frame that was necessary to comply in full with the request; and the amount of reimbursement charged to the requester for the freedom of information request: *Provided*, That the public body shall not provide to the Secretary of State the public records that were the subject of the FOIA request.

(b) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State shall propose rules and emergency rules for legislative approval relating to the creation and maintenance of a publically accessible database available on the Secretary of State's website; the establishment of forms and procedures for submission of information to the Secretary of State by the public body; and for other procedures and policies consistent with this section.

**§29B-1-4. Exemptions.**

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which

is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance:*Provided,* That this article does not preclude an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body ;

(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests or the results of those tests;

(15) Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or

planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222;

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident or to facility personnel ;

(20) Information related to applications under section four, article seven, chapter sixty-one of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: *Provided*: That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: *Provided, however*, That information or other records exempted under this subdivision may be disclosed to a law enforcement agency or officer: (i) to determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes; and

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, “personal information” means a law-enforcement officer’s social security number, health information, home address, personal address, personal telephone numbers and personal email addresses and those of his or her spouse, parents and children as well as the names of the law-enforcement officer’s spouse, parents and children.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

**§29B-1-5. Enforcement.**

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking

disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date.

**§29B-1-6. Violation of article; penalties.**

Any custodian of any public records who willfully violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $200 nor more than $1,000, or be imprisoned in the county jail for not more than twenty days, or, in the discretion of the court, by both fine and imprisonment.

**§29B-1-7. Attorney fees and costs.**

Any person who is denied access to public records requested pursuant to this article and who successfully brings a suit filed pursuant to section five of this article shall be entitled to recover his or her attorney fees and court costs from the public body that denied him or her access to the records.